S. HRG. 107–482

THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING AND TRANSPORTATION

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

EXPLORING THE SUCCESS OF THE "MULTIFAMILY ASSISTED HOUSING AND AFFORDABILITY ACT OF 1997" AND THE SO-CALLED MARK-TO-MARKET LEGISLATION

JUNE 19, 2001

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C O N T E N T S

TUESDAY, JUNE 19, 2001

WITNESSES

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

TUESDAY, JUNE 19, 2001

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND TRANSPORTATION,
Washington, DC.

The Subcommittee met at 9:30 a.m., in room SD–538 of the Dirksen Senate Office Building, Senator Jack Reed (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF SENATOR JACK REED

Senator REED. Good morning. Let me welcome everyone to this morning's hearing and call it to order.

Today's hearing is about affordable housing and how to keep it affordable. In particular, we will explore the success of the Multi-Family Assisted Housing Reform and Affordability Act—the so-called Mark-to-Market legislation. This law is scheduled to expire on September 30, 2001, and we will be attempting to determine how well it has worked and whether it needs to be reauthorized.

We will have two panels of witnesses. The first panel will consist of our three Government witnesses; John Weicher, Assistant Secretary for Housing and Urban Development; Ira Peppercorn, Director of the HUD Office of MultiFamily Housing Assistance Restructuring; and Peter Guerrero, Director of Physical Infrastructure at the General Accounting Office.

Our second panel, will consist of the stakeholders involved in the restructuring process. I will introduce these individuals later.

We will be asking all of the witnesses to tell us what progress has been made in restructuring the rents and debts of the FHA-insured Section 8 portfolio, the savings such restructurings have generated for the Federal Government, the physical condition of the housing stock, the effectiveness of the Office of MultiFamily Housing Assistance Restructuring, or OMHAR.

We look forward to examining all of these issues in detail today.

As we well know, Congress passed the Mark-to-Market legislation in 1997 in order to update and restructure Section 8 project-based developments insured by the FHA. About 8,500 such projects with over 800,000 units of affordable housing were built in the late 1970's and the early 1980's.

The Federal Government guaranteed that these projects would be built by insuring the mortgages and using Section 8 contracts to guarantee that the rents would be high enough to pay off the mortgages. In most markets, these rents were above market value.

Typically, the mortgages for these multifamily dwellings had terms of 40 years and the Section 8 contracts had terms of 20 years.

By the late 1990's, the 20 year Section 8 contracts started to expire and the Congress had begun to renew all Section 8 contracts at market rents for a period of only 1 year. In markets in which the fair market rent was higher than the contract rent, a simple renewal of the contract was sufficient to continue supporting the property.

However, in many cases, contract rents remained far above local rents. In these cases, Congress' decision to renew Section 8 contracts at lower market rents was likely to result in rents too low to support the remaining mortgage payments on such properties. As a result, it looked likely that these FHA-insured properties would default, costing Federal taxpayers tens of billions of dollars.

The Mark-to-Market legislation was passed as an attempt to address this problem. There were two objectives. First and foremost, the legislation was meant to preserve affordable housing by putting it on a stronger footing, both financially and physically. And second, the law was designed to reduce the cost to the Federal Government of rental assistance payments.

We also created the Office of MultiFamily Housing Assistance Restructuring—OMHAR—to accomplish both of these objectives, with the help of Participating Administrative Entities.

We look forward today to the testimony of our witnesses on the relative progress the Mark-to-Market Program has had and how we should reauthorize and extend this program in full or in part.

Let me recognize my colleagues before I formally introduce the witnesses.

Senator Allard do, you have any comments?

STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Yes, Mr. Chairman, brief comments, if I might.

First, I want to congratulate you on holding your first hearing as the new Chairman of this Subcommittee.

Senator REED. Thank you.

Senator ALLARD. And I look forward to continuing our productive working relationship. I believe that oversight is an important responsibility of legislators. Maybe it is the most important thing. It is probably the thing that you get the least credit for because everybody is looking for how much legislation you can pass and bills that you can get passed.

I think that it is important that as a Committee, we follow up and see how the legislation is being implemented once we do pass it. And I believe that good, effective oversight is a bipartisan issue and I look forward to working with you as we continue the diligent oversight conducted by this Subcommittee.

The Housing and Transportation Subcommittee held an oversight hearing of HUD's Office of MultiFamily Housing Assistance Restructuring, or OMHAR, 2 years ago. At that time, OMHAR was just beginning to contract with Participating Administrative Entities. (PAE's). We did not have the advantage of a broader perspective on the program.

This hearing is an excellent opportunity to revisit the issue and to evaluate OMHAR's progress thus far.

Congress created the Mark-to-Market Program in 1997, to reduce Section 8 costs, while preserving the affordability and availability of low-income rental housing. The purpose of the program is to reduce the property rents to market level, while simultaneously reducing property debt levels and owner costs to a number of tools authorized by that legislation.

These mortgage restructurings are carried out by participating administrative entities. As part of the same legislation, Congress established OMHAR to administer the Mark-to-Market Program and oversee the Participating Administrative Entities. The legislation authorized the Mark-to-Market Program for 4 years. Therefore, the Mark-to-Market Program authority and OMHAR's administrative authority expires on September 30, 2001.

Even though the program and administrative authority will expire, Section 8 properties with above-market rates will still be required to have their rents reduced to market levels. Without the proper tools to also restructure the debt, many owners may lack sufficient funds for property maintenance or mortgage payments.

Because many Section 8 properties are also FHA-insured, this would result in a significant number of claims against FHA, in addition to many tenant displacements.

Clearly, no one finds this a desirable scenario. By taking up the issue of mark-to-market reauthorization now, we can avoid it.

I believe that today's hearing is an excellent step in that direction and will provide Members with an opportunity to examine the successes and shortcomings of mark-to-market and OMHAR as we begin to formulate reauthorization legislation. I am pleased that we have a broad representation of viewpoints at today's hearing. GAO has been reviewing OMHAR for sometime now, and I am sure that they will have valuable insight to share with us.

We will also have a chance to hear the views of the mark-to-market participants, including the perspective of OMHAR, tenants, public PAE's, private PAE's, nonprofits and owners.

I look forward to hearing from all of you.

Finally, I would like to extend a special welcome to Charles Wehrwein of Mercy Housing, which is headquartered in Denver. Mercy Housing has been very beneficial, I believe, to the Denver community and I am pleased to have them represented here today on a later panel. I would like to welcome him personally.

Again, I want to thank my colleagues for holding this hearing and I look forward to working with you on this important matter and also, I personally would like to welcome the witnesses that we have on the panel.

Thank you, Mr. Chairman.

Senator REED. Thank you very much, Senator. Thank you for your kind words.

I have a difficult act to follow. You have conducted this Subcommittee with great courtesy and bipartisanship and attention to substance, and I hope that I can maintain those standards.

Senator ALLARD. I am looking forward to working with you, Mr. Chairman.

Senator REED. Thank you, Senator.

Senator Corzine.

COMMENTS OF SENATOR JON S. CORZINE

Senator CORZINE. Mr. Chairman, I too congratulate you on your first hearing. And I also would express my gratitude to Senator Allard for his strong leadership in the short time that I have been here, and I appreciate working with both of you.

This is an important issue. I have a statement for the record that I would ask that you include. I welcome the panelists and look forward to finding out more about this program and its effectiveness.

I agree with this oversight comment that Senator Allard was making as one of our more important responsibilities.

Thank you very much.

Senator REED. Without objection, the statement will be made a part of the record.

Now let me introduce the panel.

Mr. John Weicher is the newly-confirmed Assistant Secretary for Housing and also serves as the FHA Commissioner.

Prior to his appointment, Mr. Weicher was a Senior Fellow and Director of Urban Studies at the Hudson Institute. He has also served as HUD Assistant Secretary for Policy Development and Research, from 1989 to 1993. He was also Associate Director of Economic Policy at the Office of Management and Budget, from 1987 to 1989, and earlier served as HUD Deputy Assistant Secretary for Economic Affairs, from 1975 to 1977.

Ira G. Peppercorn is Director of the HUD Office of MultiFamily Housing Assistance Restructuring—OMHAR. Before his confirmation as Director of OMHAR, Mr. Peppercorn was the General Deputy Assistant Secretary for Housing, and Federal Housing Commissioner at the Department of Housing and Urban Development. Before that, he served as the Executive Director of the Indiana Housing Finance Authority. In that capacity, he was the Senior Advisor to Governors Evan Bayh, our colleague on the Committee, and Frank O'Bannion, on affordable housing.

Peter Guerrero is GAO's Director of Physical Infrastructure. In this capacity, Mr. Guerrero is responsible for managing GAO's work on housing, transportation, environmental infrastructure, and telecommunications issues. Mr. Guerrero's distinguished Federal career spans some 29 years. In addition to GAO, Mr. Guerrero has worked at both the Department of Labor and the Environmental Protection Agency.

I would also like to introduce Rick Hale to the Committee. He will be sitting in on the panel today. Mr. Hale was the principal investigator for the GAO study on the mark-to-market reauthorization, which Mr. Guerrero will speak to today.

Secretary Weicher.

STATEMENT OF JOHN C. WEICHER
ASSISTANT SECRETARY FOR HOUSING–FHA COMMISSIONER
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. WEICHER. Thank you, Mr. Chairman. And thank you for inviting me to testify this morning on the impending expiration of the Office of MultiFamily Housing Assistance Restructuring. I am here today to discuss the Administration's position concerning the future of OMHAR and its legislative authority.

Before I begin, let me express my appreciation to this Committee for voting to confirm me as Assistant Secretary for Housing and FHA Commissioner. It is an honor to appear before you today.

I am reminded that the first question at my confirmation hearing from Senator Sarbanes concerned the Mark-to-Market Program. Chairman Reed, you also raised the issue during the hearing with me, so it is fitting that my first hearing before this Subcommittee should be on the same subject.

Mr. Chairman, the challenges of HUD's multifamily assisted inventory is the most complex issue that HUD has ever had to face. I first became involved in this subject 15 years ago as a member of the Hills-Reuss task force. Congress has enacted major legislation on three separate occasions beginning in 1987. During the mid-1990's, Congress wrestled for 3 years with the mark-to-market concept before finally passing the 1997 Act. The process for dealing with these properties has taken longer than originally anticipated, we need to revisit this issue yet again.

Since becoming Commissioner, I have discussed OMHAR with Secretary Martinez and there are ongoing discussions within the Administration. Secretary Martinez stated in April the Administration intends to seek an extension of the restructuring authority and reiterated this position in his testimony before the Senate Appropriations Subcommittee last week.

As this morning's hearing demonstrates, there appears to be general support for an extension of the restructuring authority beyond this September, and the Administration will be submitting detailed legislative recommendations on how to proceed with that extension.

The future of the OMHAR office itself has generated a greater level of discussion than the extension of its authority.

Until this year, nearly all of OMHAR's actions were rent restructurings, without any changes in the mortgage amount. The first full mortgage restructuring did not occur until the second quarter of last year.

Since then, however, there has been significant progress. There are only 30 full mortgage restructurings in the year 2000. So far, in 2001, there have been 77 in 5 months, and I understand that an additional 75 are scheduled for closing in the next 60 days. This is encouraging. But clearly more work needs to be done, and we want to ensure that this important work is allowed to continue.

Secretary Martinez discussed the future of OMHAR itself in his Appropriations Subcommittee testimony. He stated that the Department expects to request a 3 year extension for OMHAR with two changes. It would not be headed by a Presidential appointee, and it would fall under the authority of the Office of Housing.

Placing OMHAR within Housing would simplify issues of jurisdiction and coordination. At present, Housing is responsible for making project subsidy payments and managing insurance contracts, while at the same time OMHAR is responsible for restructuring the subsidies and contracts for the future. The same projects are under the jurisdiction of two separate, equal offices, each reporting to the Secretary. With OMHAR under the authority of the Commissioner, this anomalous situation would no longer exist. It would also be easier to coordinate OMHAR with the 18 Multi-Family Hubs in the Office of Housing that are located around the

country. We also believe OMHAR will be able to complete its work faster with a simpler administrative structure.

I want to stress that we certainly recognize the critical nature of OMHAR's work and we have every expectation that it will continue to be fully dedicated to that work and only that work. Having come halfway through the mark-to-market process, we intend to see it through to completion.

Since OMHAR would be reporting to the Commissioner, we do not expect to recommend reauthorization of the position of OMHAR Director as one requiring appointment by the President and confirmation by the Senate. This would avoid a circumstance where one Presidential appointee reports to another Presidential appointee of equivalent rank.

We understand that almost two-thirds of the remaining properties subject to debt restructuring have contracts that expire in the next 2 fiscal years. With an average processing time of about 13 months after contract expiration, we believe that a 3 year extension is appropriate. By 2004, we should all be able to judge whether any further extension is needed, or whether the small remaining workload can be handled within FHA.

Mr. Chairman, OMHAR was created to strike a balance between the preservation of affordable rental housing and the rising costs of renewing expiring Section 8 contracts. That is important work. For Secretary Martinez and for me, continuing this work is one of our highest priorities.

We look forward to working with Congress and working with this Committee in the coming weeks on this important issue.

Thank you.

Senator REED. Thank you very much, Mr. Secretary.

We have been joined by Chairman Sarbanes. And at this time, I would recognize him for an opening statement.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, thank you very much, Mr. Chairman. I apologize. There was a traffic back-up that prevented me from getting here at the outset.

I wanted to congratulate you on the occasion of taking on the gavel of the Housing and Transportation Subcommittee. Given your ongoing active interest in these issues, we very much look forward to your leadership of the Subcommittee.

We can use that transportation dimension to address the problems that we encountered here this morning.

[Laughter.]

I also know that you and Senator Allard have worked together in a very cooperative fashion and we look forward to that relationship continuing.

Actually, the Subcommittee has not been officially reorganized, nor has the Committee itself been reorganized. That is still pending. Senator Gramm and I talked and we are proceeding, at least with the hearing schedule. I think we will have to get ourselves into place before we can actually transact the business agenda. But we are trying to move ahead and prepare.

This is a very important hearing, to review the bipartisan legislation passed in 1997 to deal with the expiration of Section 8 con-

tracts on FHA-insured buildings. The purpose of that legislation was to reduce Section 8 rents that were above market, to restructure the mortgages where necessary, and provide for much needed renovation.

The results we were aiming for and which we seem to have been achieving to date was the upgrading and preservation of valuable affordable housing at rates that were more affordable for the Federal Government as well.

The legislation establishing this Mark-to-Market Program, as well as the Office of MultiFamily Housing Assistance Restructuring, which was created to implement the program, unfortunately expire at the end of this fiscal year; namely, September 30. Yet, it is obvious that we need the program to continue. It is making advances, but the job has by no means been completed.

And obviously, we have the responsibility to decide how we want to proceed with regards to the legislation. I look forward to working with my colleagues here and with the Administration to come to a fair determination on how to keep this effort on track.

Let me again thank Senator Reed for holding this hearing. He has put together two very good panels of witnesses, which, I think will give an opportunity for all stakeholders to participate. I feel very keenly that the Committee should proceed in a comprehensive, workman-like manner, in an effort to hear from all interested parties. And that is what has been set out for today's agenda. I think, in the end, this kind of thorough review and comprehensive airing of the issues will result in better legislation and this hearing is obviously consistent with that approach.

So, Mr. Chairman, congratulations on assuming the gavel. I look forward to working with you and Senator Allard and my other colleagues as we address this.

This is one of a list of reauthorizations that I set out last week, that the Committee has to address over the next few months. We have various expiring authorizations in different areas of our jurisdiction and this is one of them.

This program is up and going. We would like it to be going much faster. Presumably, Mr. Peppercorn will address that. But this is one of the must items on the Committee's agenda.

Thank you very much for scheduling this very good hearing.

Senator REED. Thank you, Mr. Chairman.

And now, I would like to call on Mr. Peppercorn.

STATEMENT OF IRA G. PEPPERCORN DIRECTOR, OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. PEPPERCORN. Thank you, Mr. Chairman, Ranking Member Allard, Senators Sarbanes and Corzine. Thank you very much for the opportunity to be here today with you to give you a status report on the Mark-to-Market Program.

At this time, I would like to thank Secretary Martinez. He is a good man. He is going to do a great job. His staff, Commissioner Weicher, who has a long history and a good history in housing, for their leadership and for asking honest questions about the Mark-to-Market Program. If the program is continued—and I hope that

it is—I believe that their thoughtful analysis will only serve to strengthen it.

I would like to give a small caveat this morning and say that, as you see on television sometimes, the remarks here are my own, or on the editorial pages. They are my own. They are not necessarily the views of the Administration.

But there has been a lot of dialogue and a lot of good communication between my office and the new team over at HUD.

I would also like to recognize a man that is not here at this moment. I had the honor of serving under Senator Bayh when he was Governor of Indiana for both of his terms. His leadership and his vision and his spirit of bipartisanship have assisted me over the years and has been very inspiring to me and to the others who elected him to serve.

What I would like to do now is give you a brief, but comprehensive, look at what has been accomplished by OMHAR through the Mark-to-Market Program, what remains to be done, and what will be needed in order to allow the Mark-to-Market Program to continue achieving the goals that the Congress envisioned in the MAHRA legislation.

Congress created the Office of MultiFamily Housing Assistance Restructuring—OMHAR. It is quite a name, I know. But it has a very important purpose.

It was created as a semi-independent entity within HUD to address financial crisis in the Section 8 program. Former Senator Mack noted at the time that an effort to "reform the Nation's assisted and insured multifamily housing portfolio" was needed in order to handle what was termed the most difficult problem in housing at the time. And in fact, this morning, you heard Commissioner Weicher say much the same thing—the most complex issue that HUD has ever faced.

OMHAR has accomplished much and worked very hard to meet the challenge of its mission. In fact, some of the challenges are competing challenges. But unless changes are made to the sunset provision in the legislation, OMHAR and its restructuring authority will go out of existence on September 30 of this year. However, the statutory requirement and the need to reduce the rents on the expiring above-market properties will continue either imperilling the financial health of properties around the country or creating a situation where rents are not in fact reduced to market.

There are a number of goals for the Mark-to-Market Program. Social goals, particularly in terms of preserving affordable housing, financial and economic goals in terms of reducing the long-term, project-based assistance, and minimizing the risks of large FHA losses. And then there are managerial and administrative goals—promoting, operating, and cost efficiencies, addressing problems that have occurred over the years by terminating relationships with owners or managers who have not met their obligations, establishing a network of local public and private entities to administer the Mark-to-Market Program, involving tenants in one of the most substantive ways that we have ever seen, and providing a consistent, prudent, and documented process for all participating properties.

The environment today, both the economic and the political environment, differs markedly from when this legislation was first passed. Fewer properties have entered the program than we had expected.

Nonetheless, the Mark-to-Market Program offers a win-win opportunity for government, for taxpayers, for tenants, and for communities. And as more deals are closed, we save more money by reducing excess payments on Section 8 subsidy contracts, ensuring that the properties involved are on a sound financial footing, preserving needed units of affordable housing, and thereby meeting the goals of the Mark-to-Market Program.

Before you, you see a chart.

[Pause.]

You almost saw a chart.

[Laughter.]

Almost 900 properties, comprising over 63,000 units, have gone through the Mark-to-Market process, resulting in a net savings of almost $900 million, a present value of over half a billion dollars. A big job remains—about half the properties assigned to OMHAR are still in the process, representing an additional net savings of $1½ billion over 20 years, or a present value of over $800 million.

We will talk about the costs later, but the operational costs, not including the PAE's, are about $40 million. So what we are seeing is a very significant savings compared to what we are spending.

Chart 3 shows that in addition to the large number of contracts that expire through the remainder of the fiscal year, there are 3,400 more Section 8 contracts expiring in the next 3 years, about a third of which are estimated to be above market.

You will hear some folks say that we got off to a slow start. I will probably agree with that. But what you hear today is that the Mark-to-Market Program is operating efficiently and effectively. Part of our management approach, and you will read this in the various reports on OMHAR, has been to integrate constructive feedback from all of the stakeholders, enabling us to incorporate significant improvements in the process.

We have not been the type of organization that set up everything in place day one and then said, "We got it right. We got it perfect."

We did not, but we spent a lot of time listening to the various stakeholders, making the needed changes, listening to the owners, making the needed changes, and adjusting as we went along. We are operating with an experienced and highly motivated staff and with public and private contractors.

Let me give you a better idea of what we have done.

We currently have almost 1,800 properties with about 140,000 units. We are facilitating to preserve them. The underwriting requirements of the Mark-to-Market Program ensure that these affordable housing properties will be operated in a manner to ensure their ongoing viability. At a time when affordable housing is in short supply in many parts of the Nation, Mark-to-Market Program provides critically needed continuity to many communities and residents.

One of the Nation's largest apartment owners, Denver-based, AIMCO, has 110 projects in the program, considers the Mark-to-Market Program important to AIMCO and its residents in its

affordable housing portfolio. And here, though it is not in my testimony, let me take a side note and say, this was one of the innovations we created. Originally, when AIMCO came in, they might have had to deal with PAE's in 25 or 30 different States and four regional offices.

We created a large owner program so that they could facilitate access to the properties, and they would only have to deal with one regional office and two PAE's. They were able to bring in properties that not only were expiring before September 30, but, importantly, after. That is one of the innovations.

What they have said about us is that the program will enable them to continue to provide safe and decent affordable housing to qualifying tenants for many years to come while protecting HUD from claims under its mortgage insurance programs. The program is an important element in addressing the affordable housing requirements in the country. Their statement has been submitted to the Subcommittee.

Completed transactions so far have resulted in a savings of just under $900 million, with $2.4 billion to go. And present value, it is $500 million and $1.3 billion. This is not a final tally of the Mark-to-Market Program, since additional properties expected to enter the Mark-to-Market Program between now and the sunset date will generate future savings.

I have one property here. The property is called Monview Heights. It consists of 326 units in West Mifflin Pittsburgh. It is a working class neighborhood roughly 5 miles from Pittsburgh. There is going to be a net savings to the Government after a restructuring of almost $12 million.

Now, I know that the way the Federal budget works, you cannot just take it from one pot and put it into another. But when we have been paying so much money in excess of the market at a time when there is such a drain on money for affordable housing, if we can save that type of money, preserve the housing, keep people in their place, to the Federal Government as a whole, that is more money that can be used for other purposes and, hopefully, for affordable housing. Let me share some of the processes that we adopted to make sure this happened.

We made sure that there were national standards for consistency, but we enabled local solutions to local communities and local governments. We utilize a small staff of Government employees to leverage public and private contractors. There are less than 100 OMHAR employees nationally. We rely on business- and market-oriented principles to set rents. We encourage tenants to participate. And we maintain communications and we share information with all of the stakeholders.

The result of the process is savings to the Government, and to the taxpayer, that are generated even as the affordable housing remains available, and even as the physical condition is improved.

The fundamental complexity, though, the reason why you might have heard we got off to a slow start, has to do with the nature of the work that must be accomplished to restructure a property.

It is not an easy task.

The original thinking of we just set rents to market leads to a whole host of questions—What is the market? How do you assess it? How do you appraise it? How do you know?

We just cannot go out there and say, it should be a percentage of Fair Market Rent (FMR), because most people will tell you that the fair market rents are often neither fair, nor market.

There is no national database. This really shocked me. There was no national database where you can go in and submark-to-submarket, find what the rents are in that particular community. So, property by property, we have had to go in and assess them all individually. These are all one-off, difficult work-outs. They are not anything that can be done en masse.

The real estate work-outs occur in the context of a very complex legislative and regulatory environment, and it also includes negotiations with property owners, PAE's, tenants, lenders, and others in the community.

Additionally, some properties, despite having rents above market, have physical, financial or managerial problems, even before the rents are reduced.

The legislative requirements of OMHAR are explicit regarding transaction costs and cash flow to owners. For instance, there is a mandatory 75–25 split the moment a deal is restructured.

These terms created some difficult hurdles for us. In some cases, property conditions or ownership problems have been such that we have not been able to close a restructuring transaction or continue assistance on a project-based basis. At that time, we have to figure out how to best protect the tenants and sometimes we have to voucher the property.

How has OMHAR responded to these challenges?

We have listened to our stakeholders. We have implemented changes when prudent and reasonable. We have developed a program as flexible as possible within the context of legislation. And as a result, starting last summer and moving into the fall, we met with all kinds of stakeholders, resulting in revisions and initiatives to address their concerns.

First, we introduced additional performance-based incentives for participating owners. Every year after the Mark-to-Market Program, if the property meets its physical, managerial, and financial standards, the property owners will receive a market level of return on the capital they were required to invest.

Now you might say, why didn't we offer this earlier?

Remember the context in which we were working, where people were thinking that owners were just simply getting too much.

To have added to that at the time, and this was the direct feedback that we got, was we would make the deal too rich. And so what we did is we listened and we listened to the owners' communities and we listened to the tenant groups and we listened to the nonprofits. I personally sat down with the Inspector General and I said, this is the problem that we are facing. The deals will not work from a financial point of view unless we do this. And she put out her concerns, which had to do with how they were going to be monitored afterwards, and in the end, agreed with us.

That was not something that we could have done earlier.

Second, we introduced incentives for purchasers, recognizing that the additional costs they will incur over costs typically incurred by owners. This is true for both for-profit and not-for-profit owners.

Third, we made use of the statutory authority to forgive second mortgage debt when appropriate. And Chuck Wehrwein, who will be speaking later, works for Mercy Housing, was someone on our stakeholder panel who was working for a nonprofit, who can tell you about the benefit of the reduction of that debt.

Finally, we introduced reforms to improve the level of communication between owners, OMHAR, PAE's, and purchasers. We gave owners and purchasers the right to receive various important information throughout the restructuring process, and we formalized the notification and appeal process.

Some other things which I will go through quickly.

We created an agreement with Ginnie Mae. We created a large owner initiative. We have responded to concerns and comments from our partners. All of these initiatives have demonstrated our commitment.

So where are we today?

We have closed 126 full restructurings. We have about 75 in the pipeline in the next 60 days. Five hundred what we call Lites, which was a program innovation where people could take the rent reduction without the debt restructuring. We have 116 in owner negotiations, 331 in due diligence and underwriting, another 300 expected to come in. The thing is moving.

As the Commissioner said, there is absolutely more work to be done. The program is in place. Yes, it took time for the program to build its infrastructure. I want to make a side comment here.

One of the things that we did at the very beginning was we looked and we listened to what had failed in the past. And one of the lessons was coinsurance.

What people said to me was, do not start rushing in to do deals right away. Build the infrastructure first. I said this before this body 2 years ago.

We took a lot of heat for that approach, but in the end, we have the right structure. We have a structure that stood up to public scrutiny, not once, not twice, but three times. And we have a program that is working and working in a way that not only financially and not only from a preservation point of view, but also ethically, I feel completely comfortable standing before this body and saying, we did the right thing.

Staffing—we have less than a 100 staff on board. Only 38 are permanent, 49 are temporary. And this is one of the core problems. Two-thirds of our staff is comprised of production staff who oversee the PAE's, who review the deals, who conduct the closings. Three-quarters of those field staff that are completing the restructurings are term employees, which means that their jobs with OMHAR expire in 102 days.

The staff has incredible backgrounds. As envisioned under the legislation, we have people from the RTC, from the FDIC, from lenders, from nonprofits, from HUD, and from other Federal Government agencies. It is an incredibly broad staff. I am absolutely impressed by their dedication and their professionalism, especially

knowing that some of them are worried about what is going to happen to them personally on the September 30 sunset date.

The PAE's—our partners, are the third parties who actually do the nitty-gritty work. And what we have seen is that there has been a consolidation. We had 42 public PAE's and nine privates. We are now working with 25 publics and nine privates. Why?

One of the things that we learned again is that this job was very tough, difficult real estate work. This was not just tax credit allocation. Nor was it bond issuance. It meant very difficult real estate knowledge. And what we saw was that there was slower than expected deal flow, which means that the volumes were insufficient. The restructuring process was much more rigorous than they expected. Their staff had other priorities. And there were many roles in terms of being a Section 8 contract administrator and lender. That led to some conflicts.

The consolidation has actually worked very effectively. But with 900 deals under the belt, and more to come, we have a stable capacity. It is important to emphasize that public entities can and will continue to play a vital role, even though in certain cases being a PAE has not been the best role.

HFA's, in their traditional role, and I am a former HFA director, as affordable housing lender, tax credit allocator, or allocator of housing grants, they are very well positioned to work with us to provide funds to restructure properties. In addition to their working relationships, public entities can often be very helpful in terms of knowledge about the properties and the owners in their jurisdiction.

Chart 6 shows that we have arrived at a balance—in quality, in oversight, and in timeliness, that is working. To date, OMHAR has cost $32.4 million in staff and other costs, due primarily to the financial advisors, achieving savings of $866 million. That is a pretty impressive ratio.

What do we need to finish the job?

September 30, 2001, the sunset date called for in the MAHRA legislation, is fast approaching. Planning must occur now to determine the Government's approach to reducing rents on expiring Section 8 contracts after that date. Without the legislative authority to reduce a property's mortgage payment when it is reduced, HUD will have to watch Section 8 properties struggle with excessive debt burdens. Owners may cut back on maintenance to make ends meet or default. And if we do not do something quickly, people are going to be looking for other positions. Over half of OMHAR's staff expire with the sunset.

The Mark-to-Market Program and its stakeholders will need an assurance of continuity in order to maintain the momentum, in order to continue to bring the benefits of affordable housing units.

Mr. Chairman, we have a compelling story. We are not only preserving affordable housing, but also doing it at a ratio where cost savings are 20–1 of what our costs are.

We are happy to work with the new Commissioner and the new Secretary toward a cooperative solution so that this terrific program can continue.

Thank you.

Senator REED. Thank you very much, Mr. Peppercorn.

We have been joined by Senator Dodd of Connecticut. Senator would you like to make a comment?

COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I would ask unanimous consent that my comments be included in the record at this point. But let's move along with the witnesses.

Senator REED. Thank you.

Without objection, Senator Dodd's comments will be included in the record.

Mr. Guerrero, could you strive for 5 minutes?

STATEMENT OF PETER GUERRERO
DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES
U.S. GENERAL ACCOUNTING OFFICE
ACCOMPANIED BY RICHARD HALE

Mr. GUERRERO. Yes, Mr. Chairman.

Senator REED. Thank you.

Mr. GUERRERO. We are pleased to be here today to discuss our report on the Mark-to-Market Program.

As you know, this program is aimed at preserving affordability of low-income rental housing, while reducing the cost of rental assistance subsidies. More specifically, the program provides a framework to restructure Section 8 properties by lowering rents when those contracts expire and by also reducing mortgage debt if such action is necessary for the properties to continue to have a positive cash flow. Without such restructuring, rents for many of the approximately 8,500 properties in HUD's portfolio would substantially exceed market levels, resulting in far higher Federal subsidies under the Section 8 program.

As provided for in the Act, OMHAR has contracted with public and nonpublic entities—these are referred to as PAE's—to carry out the mark-to-market restructurings on behalf of the Federal Government. There are two kinds of restructurings. The first is referred to as a full mortgage restructuring and involves resetting a property's rents to market levels and reducing its mortgage debt by the amount needed to insure the property achieves a positive cash flow. The second type is referred to as a rent restructuring and it involves reducing the property's rent levels, but not reducing its mortgage debt. This type of restructuring generally occurs when the property is physically and financially sound, so that it can continue operation at market-level rents with the existing mortgage.

Legislation does expire at the end of this fiscal year. After that, HUD will still be required to renew Section 8 contract rents at market levels, but the tools established by the Act for restructuring the mortgage notes will no longer be available. OMHAR's authority would also terminate at the end of this fiscal year without further action.

Our statement today focuses on three issues. First, the status of this program. Second, factors that have affected the pace of the program. And third, advantages and disadvantages to continuing the program and OMHAR.

In summary, we found, first, as of May 2001, approximately 1,500 properties were in OMHAR's Mark-to-Market Program. Figure 1 in my written statement shows that about 60 percent of these properties will receive full mortgage restructurings and the other 40 percent will receive rent restructurings.

Figure 3 in my written statement shows that OMHAR has completed about 12 percent of the properties requiring a full mortgage restructuring and about 84 percent of the properties requiring rent reductions.

Figure 4 in my statement shows that OMHAR estimates the Federal Government will realize about $500 million in savings over a 20 year period from the restructurings that it has completed so far.

However, for some properties that have not successfully completed the restructuring process, the requirement to reduce rents to market has decreased the properties' cash flows, increasing the likelihood that these properties will develop physical and financial problems later on down the road. And we believe that these properties need to be very closely monitored by HUD.

Second, Mr. Chairman, we found that various factors have affected the pace of the program. It took almost 2 years to get it up and running, during which time, as you heard, OMHAR had established the infrastructure to begin assigning the large volume of properties to the PAE's for restructuring.

Other factors may have slowed the process as well. The initial process that OMHAR used for reviewing and approving restructuring deals and detailed requirements contained in the program's operating procedures guide, and the unwillingness of some owners to participate in the program, were all factors.

However, OMHAR has taken actions to address these matters and program stakeholders that we talked to, believe that the pace of the program has improved.

While the program has proceeded more slowly than OMHAR originally estimated, many stakeholders believe that OMHAR's progress in implementing the program has been reasonable, given the program's complexity and the number of tasks that needed to be accomplished.

Third, Mr. Chairman, we found that extending the program past its scheduled termination date would be more advantageous to the Federal Government than ending the program.

As shown in Figure 5 in our prepared statement, there is over 1,300 Section 8 contracts with above-market rents that will expire over the next several years. If rents on these properties are marked down to market levels, as they would be required to do, even if the authority expired, without providing for mortgage restructuring, the reduced rents may not be sufficient to provide revenues to cover operating expenses, mortgage payments, and much needed repairs. This would force the owners to reduce expenditures for maintenance, adding to the possibility of deteriorating properties and possibly defaults on these properties.

Such outcomes—deteriorating properties and claims against the FHA insurance fund—are outcomes that are generally viewed as undesirable and would have an undesirable impact on the affordability of American housing.

Extension of the program, on the other hand, would permit Section 8 property owners with above-market rents and unexpired contracts to benefit from the restructuring tools that are currently available and prevent the adverse effects on affordable housing that could occur if the program is not continued.

For this reason, all of the program stakeholders who participated in our panel, our expert panel that we sponsored as part of our work, support the continuation of the program beyond the end of this fiscal year when it would otherwise terminate.

Finally, Mr. Chairman, we agree with the view expressed by most program stakeholders that the administration of the Mark-to-Market Program should continue to reside in an office dedicated to the program's implementation and that office needs the resources and expertise to administer the program and oversee these complex transactions.

Some stakeholders felt that integrating this program into HUD's Office of MultiFamily Housing could improve efficiency, transferring program responsibilities from OMHAR to HUD without dedicated staff to administer the program could disrupt momentum.

There was also concern that if OMHAR staff transferred to HUD were not assigned specifically to this mark-to-market function, they could be reassigned by HUD to perform other HUD functions. And this is given to the fact that we have consistently been told that the HUD field offices and staff are stretched very thin. So this is a well-founded concern.

In conclusion, Mr. Chairman, if the legislative authority for the Mark-to-Market Program is allowed to expire on September 30 of this year, HUD estimates it will have to reduce the rents to market levels for some 1,300 properties without having the tools necessary to mitigate the potential adverse effects of such reductions. Doing so could both affect the quality and availability of affordable housing. While transferring authority for the Mark-to-Market Program to HUD's Office of Housing could potentially help facilitate the coordination of some mark-to-market related functions, care must be taken to retain program staff resources and expertise.

Thank you.

Senator REED. Thank you very much, Mr. Guerrero.

Let me begin the round of questioning by addressing a question to Secretary Weicher. Mr. Weicher, what specific changes would you be urging at this point with respect to extension of the Mark-to-Market legislation?

Mr. WEICHER. What changes in the authority? Mr. Chairman, that discussion is still going on within the Administration and at this point, we do not have a specific set of recommendations to give you. I wish that we did and I can assure you that we will be giving you recommendations as quickly as we possibly can.

Senator REED. Thank you. So, we can anticipate informally being contacted with your proposals, both Senator Allard and I?

Mr. WEICHER. Yes, you can. And formally, on behalf of the Administration as well.

Senator REED. Thank you, Mr. Secretary.

Mr. Guerrero, I will ask you the same question from your perspective, and Mr. Hale's perspective. What changes would you suggest as we go forward to the mark-to-market?

Mr. GUERRERO. We provide in our report that is soon to be issued a number of specific changes that key stakeholders thought would be helpful to continue to move this program along. We took no position on those matters. We simply enumerated them. Some of them include providing for additional funds to help with the rehabilitation of these properties necessary to keep these deals moving. Others deal with the administrative process in terms of getting correct rent comparability studies that OMHAR feels that they can rely on in the beginning of the process—studies that are accurate and complete.

First I would say that the most important factor, though, that we recommend here is, prompt action. Because of the deadline, OMHAR will lose contract staff that have unique expertise in this program if there continues to be uncertainty with regard to the future of this program. Also, that uncertainty will have an adverse effect on owners of these properties creating some uncertainty as to what exactly to do. Is it better to wait? Is it better to come in now and proceed with these deals? So moving quickly is the most important thing that we could recommend.

Second, the other thing that we would recommend is certainly renewing the authority for restructuring the mortgages. We think that that is critical to preventing future defaults and deterioration of these properties.

Third, we would recommend that wherever this function resides, whether OMHAR continues, whether it goes to HUD's Housing Assistant Secretary, it is important to have dedicated staff and resources to continue the momentum of the program.

Senator REED. Thank you, Mr. Guerrero. You point out, as you alluded to in your report, that, in your words, it would be workable to place OMHAR under HUD's Office of Housing, so long as such action does not disrupt program momentum.

One of the aspects of OMHAR is that, as you point out, many of the staff are contract staff that are, as I understand, reimbursed on not a typical civil service scale. Is that correct?

Mr. GUERRERO. That is correct.

Senator REED. So in any transfer of functions directly under HUD, your presumption would be that you would have to maintain that scale of compensation and the same type of contractual arrangements?

Mr. GUERRERO. That is correct.

Senator REED. And there is, I presume, a danger by integrating it into HUD, or at least an issue whether or not that same type of reimbursement and contract schedule would be maintained.

Secretary Weicher, is that one of the considerations?

Mr. WEICHER. Well, we certainly are aware of the issue, Mr. Chairman. We know that it is a problem. We know that financial regulatory staff in Washington are typically paid better than staff who perform other functions in various Cabinet agencies. So, we certainly intend to address that question seriously. And while I cannot offer you a specific recommendation from the Administration on this point, I can restate our commitment to making this program continue to work, not lose the momentum that has been built up, and see this thing through to completion as expeditiously as possible.

I might also say that the Secretary has general authority to pay above the GS scale in certain situations at his discretion and that becomes a possibility in addition to the differential that is established for financial regulatory personnel.

Senator REED. Thank you.

Let me now call upon Senator Allard, the Ranking Member.

Senator ALLARD. One thing that I think would be helpful to us on the Committee here is to follow up on the recommendation from the panel of experts that you had there.

They recommended two main options for program administration. They recommended OMHAR or HUD's Office of Housing. Could you explain to us what you view as the pros and cons to each one of these options?

Mr. HALE. Certainly, Senator Allard. Actually, some of those have been discussed.

I think the main perspective of people who favor transferring the program into HUD's Office of Housing were well articulated by Mr. Weicher, that they felt like it could facilitate coordination between the office responsible for the program and other activities conducted by the Office of Housing that deal with multifamily properties covered in this program.

But the preponderance of people that were on our expert panel, many of whom are here today, supported a continuation of OMHAR or an OMHAR-like office that would still have resources and expertise dedicated to the administration of the program. And as Mr. Weicher said, and also Mr. Peppercorn, I think given the complexity of this program and the difficulty of carrying out the restructuring actions under it, it is important to have staff that are dedicated to the program and understand it and have the capabilities to complete these actions.

Senator ALLARD. Mr. Peppercorn, how long do you think we need to reauthorize the Mark-to-Market Program?

Mr. PEPPERCORN. Three years seems to be a reasonable number. When you project out the deal expirations, most of them will have come in by that time.

Senator ALLARD. Are you of the view that this is something that we will have to have in place permanently that will always have a restructuring need out there?

Mr. PEPPERCORN. I think Congress did a pretty wise thing by saying that a particular office has a sunset date. I think it is a better idea to extend for 3 years, as opposed to permanently, and then come back at the end of 3 years again and say, do we need this now or are we done?

Did I answer your question, sir?

Senator ALLARD. I think you did, yes. Not directly, but certainly indirectly.

[Laughter.]

Now, your estimates also indicate the number of restructurings will steadily decline with time.

Mr. PEPPERCORN. Yes.

Senator ALLARD. What do you think should be OMHAR's need as far as budget and staff members?

Mr. PEPPERCORN. It is going to be about the same for a while because it has taken a little over a full year to complete. So that

means that even if they are coming in at about the same level, or even with a slight decrease in the next year, it is still going to take 1 or 2 years for that work to taper off.

I would say, for the most part, the number is pretty close. We are actually authorized for 101. We have tried to be efficient. We are only in the 80's at this point in time.

Let me also point out that if in fact the work goes down, there are ways in which the skills and talents of the people in this office can be used. You have people who really understand real estate, that understand how to set markets that could potentially do other work-outs.

So if for some reason the workload drops off, I think the Secretary and the Commissioner have a terrific team that could potentially be deployed for some of the other needs in the organization.

Senator ALLARD. I would like to turn now to the General Accounting Office. I do not know which one of you would need to answer this question. But I would like to have your view on the length of time for reauthorization. And then your view on administering the office and the number of employees.

Mr. GUERRERO. I think the consensus seems to be around 3 years and we would support that. We think that is a reasonable number. There is also merit to having that a firm 3 years because it encourages the parties to come to the table, knowing that there is an end to this process and that entering into the process sooner than later is to their mutual advantage.

The resources—we do not really have any particular view as to what that would entail, but we could get back to you on the record with some estimate of what resources would be required for that extension.

Senator ALLARD. Mr. Chairman, I know that I am running short of time, but I have just one more brief question here, if I may, for Mr. Peppercorn.

Senator REED. Yes, go right ahead.

Senator ALLARD. Thank you. Would you explain to me in a little more depth about these properties where we had rent adjustments. There seems to be a general feeling that they should have had total debt restructuring, and just what is going on in those properties.

Mr. PEPPERCORN. Absolutely. It is probably the most difficult problem that we face. When MAHRA was created, what happened was, in addition to requiring that rents are reduced, there were also other restrictions that were put on the property. For instance, the moment you had a dollar written off into a second mortgage, the proceeds of the cash flow had to be split, 75 percent going back to the Federal Government, 25 percent going to the owner.

Second, any rehab needs, the owner had to come up with 20 percent in cash of those costs.

Third, and we have adjusted this somewhat, they were asking to be extended out for 30 years. We were asking them to extend out for 30 years. They were only getting back a Section 8 contract of 1 to 5 years.

What that created was a dynamic where many owners simply did not want to participate. They did not want to lock into their cash flow being so constrained. They did not want to lock into 30 years.

And so, what they did was they tried, in essence, to say, we will take the Lites. We will get our rents reduced. Leave me alone.

What has happened, though, is in certain cases, the property cannot be sustained, in our belief, sufficiently to keep that going.

What are the options at that point?

We cannot go in and force the owner to accept a debt restructuring. We cannot legally go in and take the property away. So when an owner says no, I do not want a full debt restructuring, for whatever reason, it creates the most difficult problem we are facing, which is, we now have a legal obligation to reduce the rent. We know that the property really needs a debt restructuring. The owner will not agree. And then the question is, what do you do?

The system that has been created, and we have worked with both Housing and the GAO on, is a system called a Watchlist. There is no one I know that is completely comfortable with the way that is working. We all know it is a challenge. We are absolutely open to ideas on how to make it better, how to fix the problem, because you are putting your finger on exactly the most important and most difficult problem we are facing.

Senator ALLARD. Yes, and I am struggling with that myself, and I was hoping you would have some suggestions.

Thank you, Mr. Chairman.

Mr. PEPPERCORN. Thank you.

Senator REED. Thank you, Senator Allard.

Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Peppercorn, first of all, let me say that the Members of the Committee share your generous evaluation of Senator Bayh and we were pleased to hear it. We will commission the staff to make sure that he hears of your very kind remarks here this morning.

[Laughter.]

Mr. PEPPERCORN. Thank you.

Senator SARBANES. Mr. Weicher, we are pleased to have you back, now confirmed as the Assistant Secretary. I thought we had an interesting nomination hearing. In fact, I thought it was very useful and very helpful, and perhaps, although you were on the hot seat for a while, perhaps a good example of how a nomination hearing can be very helpful in terms of clearing a nominee and developing some policy.

Is it the Administration's intention to actually submit to us a piece of legislation? Are you just going to give us ideas of what you think should be done, or is it your intention to actually send us a draft bill?

Mr. WEICHER. It is our intention to send you a draft bill. It may not be a long draft bill, but it is our intention to send you one.

Senator SARBANES. All right. Now I was looking at your statement, where you say, "There appears to be general support for an extension of the restructuring authority beyond the current scheduled expiration date."

Do you see where I am?

Mr. WEICHER. Yes, Senator.

Senator SARBANES. Then you go on to say, "The Administration will be submitting legislative recommendations on how best to proceed with that extension." I reread that sentence three or four

times. I was kind of looking for the word after submitting, like soon, promptly——

[Laughter.]

In the near future, post-haste.

[Laughter.]

I did not find it. What is your response to that?

Mr. WEICHER. Senator, I think you are a careful reader.

[Laughter.]

Let me say that we will be submitting legislative recommendations as quickly as possible.

[Laughter.]

And let me say also that the Subcommittee has made clear that it would like those recommendations as quickly as possible.

Senator SARBANES. Let me underscore that with this observation. I will put a question to the GAO people.

It is my understanding, at least from general reports, that the staff that has been assembled at OMHAR, although they have had some slowdown in getting going, but now they are going, and that there is generally respect for the quality and the competence of that staff. Is that correct?

Mr. GUERRERO. I think that is a correct assessment.

Senator SARBANES. Now, Mr. Peppercorn, what is going to happen to that staff if we run up toward the end of the fiscal year and there is not a reauthorization, and come September 30, you are confronted with sort of a drop-dead problem?

Mr. PEPPERCORN. They are worried. I mean, we talk regularly. They are comforted by what Commissioner Weicher and the Secretary have said in terms of their intent and what everybody believes will happen.

But as somebody said to me in one of our regional offices last week, well, we know what you think, Ira. We know what they think. We know the direction it is going to go in. But I have a mortgage to pay and kids to feed. So the closer and closer you get to September 30 without a formal renewal, the more difficult it is for the very talented people on the staff to hang in there.

Senator SARBANES. I think generally here, we share a respect for that staff. I think the intention is to reauthorize. And so, I think you can communicate that to them as well.

Now, I come back to Mr. Weicher. We are on a fairly tight timeframe here and I want to underscore that. We are in this week and next week. There is then a break for July 4. We are then back for a July period. And I think we should be aiming to try to move this bill through the Senate during that period because, at the end of that period, there is an August break. We are not here at all in the month of August, and we come back after Labor Day. If we do not move the bill out of the Senate during the July period, we will be a little behind time.

Of course, the House would have to move a bill as well. You would have to reconcile whatever differences and get something into law by September 30. So, we really do need something from the Administration quite quickly.

Now that may argue for you simplifying or streamlining what you submit. Obviously, the more far-reaching it is, the more it needs to be worked over.

I think my colleagues would agree that is the scheduling framework within which we are now operating. We do not want to lose these people. It seems that finally, we have a good crew put together and they are doing a good job and we want that process to continue along.

I feel strongly about this because there is a lot of affordable housing out there. We do not want to lose it. Some of this restructuring, we are in the process also of refurbishing this housing and maintaining, sustaining the inventory and keeping it. And we have a very serious affordable housing problem.

Now, we discussed production at your hearing and that is a separate issue. But at least this existing housing, affordable housing, I think we have to place a great premium on sustaining it in the inventory.

Senator ALLARD. Would you yield?

Senator SARBANES. Yes.

Senator ALLARD. How are we doing on filling up your positions, your appointments, nominations and what not? Do we have your area where you need suggestions to set public policy in this area? Do we have those positions pretty well filled, or are we still struggling to get those filled?

Mr. WEICHER. I believe you have two confirmation hearings on Thursday of this week with Mr. Rosenfeld and Ms. Antonelli. And I believe there are three others who are in the process of nomination, or being named by the President.

Senator SARBANES. Yes, but the remaining three, they are not before us.

Mr. WEICHER. No.

Senator SARBANES. The ones that are before us, we will have a hearing on.

Senator ALLARD. And if there is some way that we can put those that haven't been put forward by the Administration, that we can put them on a faster track or somehow, I think we would all probably appreciate that so that we can move forward and get your recommendations, get as much help on board for you, because this is pending legislation that is going to come up here quickly.

Senator REED. Again, I think that Senator Sarbanes' point is very well taken because of the schedule. We certainly would benefit from the recommendations of the Administration. But at some point, just because of the time schedule, we will have to move.

Mr. WEICHER. I think those are all very reasonable statements, and I think that is a very reasonable schedule, Senator Sarbanes, that you have set forth. It certainly seems to me to make sense.

If this is legislation that you are trying to deal with on September 29–30 and with detailed changes, then I think we may all not be very happy with the outcome after the dust settles.

I think we know the schedule. We are working to get you our recommendations as quickly as we can, and we realize the more complicated the recommendations are, the more complicated the legislative consideration process will be.

Senator SARBANES. Well, I think, to sharpen it up, I think it would be very helpful to have your recommendations by the end of this month, or certainly into the first week in July, which is when

we are away, so that it is available to us when we come back in, and we can incorporate it into our thinking as we move towards a fairly prompt mark-up in July.

We not only have the problem of moving it through the Committee, but then finding time on the Senate calendar in order to take it up, although, hopefully, this would be a noncontroversial piece of legislation. It would be easier to do, to move it on the floor, without a great commitment of time. These things have a way of getting backed up. It would not be so serious if we were not running the risk of losing this team that has been assembled and put together, which most everyone thinks is currently doing a creditable job.

Mr. WEICHER. We certainly do not want to terminate the activities of OMHAR and we do not want them to be terminated by inadvertence, either.

I think, Senator, you have given us a very reasonable timetable and we will do our best to meet it.

Senator REED. Thank you, Mr. Chairman.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman. And that is the line of questioning I had as well for Mr. Weicher.

First of all, let me thank all of you for being here and testifying.

Just to explore this a bit, the timeframe, and Senator Sarbanes and the Chairman have identified it, well, even in July, we are looking at a series of appropriations bills which can just consume the entire time on the floor of the Senate.

One Senator on this kind of a matter could basically kill this, is the way I see it, with the timelines being what they are. It is not going to take any Herculean effort here to stop the reauthorization of this program.

And so, it becomes, I think, not only important in terms of submission, but I would like to just explore with you, to what extent you think this is worthwhile reauthorizing.

It seems to me that this is not de novo, and I understand the need for having people in place obviously to help administer. But we are not talking about the creation of an office here. We are now talking about an established record, at least I see an established record, and the GAO seems to confirm that.

I realize you do not have a plan yet. I would like to explore with you whether or not you think it has been worthwhile.

Obviously, if the Administration in its language is not particularly pleased with this kind of an operation, that you have some kind of problems with it, I think it is very helpful for us to know that today.

I can wait for your submission in July, but at that point, I need to get from you whether or not you think this office and this particular effort has been in the best interest of everyone involved. Or do you think it ought to go to FHA?

I know there is a turf battle going on here a bit, but aside from doing that, is this in your view—you are an experienced person. This is not something we are just bringing up to you today for the first time. You are very familiar with it. What do you think of it? We can get into the details of it, but has this been worthwhile or not?

Mr. WEICHER. Well, Senator, to expand a little bit on what I said in my prepared statement and my opening remarks, the Secretary has said on behalf of the Administration that we want to extend the basic authority of OMHAR.

Senator DODD. Yes.

Mr. WEICHER. We are about halfway through a process that you put in motion in 1997. We think that process should continue. We do not believe, and I have not heard anyone say this morning, that at this point, we should adopt a new approach to deal with the last half of the properties that are going through the system.

The questions are likely to concern the administrative structure of the office and its relationship with the rest of HUD and it may involve some suggestions for changes in the specific authorities. I notice some suggestions in some of the testimony from the second panel. But, as I also said, this is as tough an issue as any of us are ever likely to face in HUD, and that is saying something. There are some competitors for that title.

But this is something that you all have been wrestling with for years. We have a strategy that you adopted after a great deal of hard work in 1997, and it is our view to carry that strategy forward to conclusion.

I hope that is responsive.

Senator DODD. It is responsive, and I appreciate that very much.

Are you satisfied as well with Mr. Peppercorn's numbers in terms of the cost savings that have been realized up to this point? Or is there some debate about that?

Mr. WEICHER. There is no debate on them. I have not sat down myself and gone through the numbers. Having said that, let me go back and say that there is, as far as I know at this point, no de-bate on them. I think we all have slightly different numbers. Those numbers change every time there is a new resolution or restructuring.

Senator DODD. Yes.

Mr. WEICHER. And I think if you sat down and looked at the testimony of everyone, you will see some differences.

Senator DODD. Is there any authority which exists within the Department, for instance, if we were unable, for whatever reason, to adopt legislation? Is there some way the Secretary would be allowed or could allow the office to continue in operation for a period of 60 or 90 days, whatever, if Congress for some reason were unable of adopting, both Houses, a bill that the President was able to sign?

Mr. WEICHER. I do not know, Senator, very simply. I hope that if that were to happen, if we were in that situation, we would be able to do that on some basis, but I am not a lawyer and I am not an expert on legislation.

Senator DODD. I might say if you would take a look at that and let us know. That might be helpful in terms of just the clock up here in terms of how we are functioning.

That would also get to the point that Senator Sarbanes has raised. And again, I would just raise it here.

Have you had a chance to make any assessment of the quality of the people in this office, Mr. Weicher?

Mr. WEICHER. No, Senator, I have not. I have known Mr. Peppercorn since he was at FHA back in 1997 and 1998. Beyond that, as you know, I have been in office for 18 days and I have not——

Senator DODD. That is a long time.

[Laughter.]

Mr. WEICHER. It seems longer every day.

[Laughter.]

Yet met with the people at OMHAR.

Senator DODD. Very good. You might just take a look because I think that point of obviously putting together this synergy of talented people, I do not need to tell you how that works. Obviously, you have seen it in so many different capacities in your life. But if you lose that, it falls apart, trying to replace it again, can get right back to the very worthwhile critique of why this program took so long to get going. And going back to the director of this program and then putting the staff together. So, I think the notion that we could end up losing some talented and bright people—the offers are out there when you are that talented, to be able to move people very quickly if you are in a situation where you are vulnerable.

I think that is worth mentioning.

Finally, Mr. Peppercorn, one of the concerns we have heard voiced is that a number of the properties with above-market rents are not being referred by FHA to OMHAR. What is going on there? What is the problem there?

Mr. PEPPERCORN. That is something that we have talked to the Office of Housing about. The properties need to go from the owners to the HUD field offices and then over to us. I do not know what the reasons are. And what we do is we look at the model and we predict which properties we think will come in and which properties have not come in and see where there is a gap.

And we have communicated the data to the Office of Housing and I believe that it is appropriate for them to really take a hard look at the very question you are asking.

Senator DODD. Well, Mr. Chairman, I notice that we do not have anyone from FHA on our panel. You have a very complete panel here coming up. But I wonder if we might do a letter to FHA.

Senator REED. Actually, Mr. Weicher is the Commissioner.

Senator DODD. Well, I know. But do you have any reason why that is going on?

Mr. WEICHER. Senator, I do not know why that is happening at this point. In the process of preparing for this hearing, I became aware of this as a problem as seen by OMHAR and I have asked our Office of MultiFamily Housing to ascertain what the problem may be and see if we can identify for specific projects what else we should be doing.

It is not our intention, it is not Secretary Martinez's intention, not my intention, to delay this process because of confusion and bureaucratic difficulties between agencies. We do think, as I said in my statement, that if OMHAR is within Housing, we have better control over the relationships between the MultiFamily Hubs and OMHAR and between the rest of the Office of Housing. So that we do not have complicated conversations about what is really going on.

Senator DODD. Fine. Yes?

Mr. GUERRERO. To put some perspective on this, we observed that only 32 percent of the expired contracts in the last fiscal year were referred to OMHAR. A look needs to be taken, as HUD indicated, at the reasons for why that is.

One possible explanation we heard is simply the changing economics in certain markets. We have had a very robust economy in certain markets. That could account for why some of these properties when their contracts expire do not get forwarded.

Some of our panelists thought perhaps that would suggest a need for a third party to look at the rent comparability studies that begin this process, to ensure that they are accurate and reflect the true market conditions, so that when you begin the process, you are actually starting with good data.

Senator DODD. Yes.

Mr. GUERRERO. And that would eliminate data as a potential source of the fact that some properties that should be coming into the system are not coming into the system.

Senator DODD. That is a good suggestion.

Finally, Mr. Chairman the statute requires the tenants—for you, Mr. Peppercorn—that significant stakeholders be involved in the restructuring process. I guess the question that I would ask you is: Are the PAE's meeting this requirement?

Mr. PEPPERCORN. I think for the most part the answer is yes. I know from an OMHAR policy point of view, the answer is absolutely yes.

There have been cases that have been brought to my attention where the PAE was not paying good enough attention to tenant issues. Some of the things we have heard in particular were that tenant meetings were scheduled during the day on family properties. That means that people cannot go. Every single time we have heard an issue like that, we have stepped in. Some of this was a learning curve on the part of the PAE's.

Moreover, about 2 weeks ago, we brought in PAE's and tenant groups and OMHAR staff and housing staff from around the country to have a training session, to have people share their experiences honestly.

And my sense of things is, it is not perfect but it is pretty good.

Senator DODD. Did GAO look at that at all?

Mr. HALE. Yes, Senator Dodd. Actually, when we had our expert panel back in February, that was an issue that came up. We had representatives from tenant groups there, as well as OMHAR. And they expressed some concerns about just the things that Mr. Peppercorn was talking about, about meetings not being held appropriately, tenants not getting notification.

And actually, since then, we have followed up a couple of times and to OMHAR's credit, they have had a couple of additional conversations where they did bring in representatives, most recently a couple of weeks ago, from the tenant groups and from a number of PAE's to talk about these issues. So that is positive.

Having said that, it is still going to be an ongoing situation that OMHAR obviously will need to stay on top of to make sure that the tenants do get a chance to participate.

Senator DODD. Thank you very much.

Thank you, Mr. Chairman very much.

Senator REED. Thank you, Senator Dodd.

Thank you to the panel.

There may be additional questions which we would solicit in writing. And I would urge you to promptly respond so that we can move this process forward.

Thank you very much.

I would now like to call up the next panel, please.

Before introducing the second panel, I would like to yield to Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Unfortunately, I am going to have to leave for a conflicting engagement. I do want to thank the people on this panel. I have had a chance to look through their statements and obviously, a great deal of work has gone into them. And there is really a great deal there that I think is beneficial to the Committee, and I am most appreciative for that contribution. I apologize that I am not going to be able to stay to hear the testimony. I do want to make two observations, Mr. Chairman.

First of all, I want to observe that the National Leased Housing Association is quick on the beat. I see that they have John Bentz, who is one of the directors of the association, to give their testimony today. And it just so happens that Mr. Bentz is from Providence, Rhode Island.

[Laughter.]

Senator REED. Coincidence.

[Laughter.]

Senator SARBANES. And I also want to observe that the Mercy Housing people are here with Mr. Wehrwein, and that their headquarters is in Denver, Colorado.

Senator Allard had to leave us for a brief period, but I am glad to see a panel that is staying abreast of the times, Mr. Chairman.

[Laughter.]

Thank you all very much.

Senator REED. Thank you, Mr. Chairman.

Let me first introduce the panel formally and then we will begin with Mr. Wehrwein.

John Bentz is from my own home State of Rhode Island. John is here on behalf of the National Leased Housing Association, of which he is a Director. He is also Cofounder and President of Property Advisory Group, which manages approximately 2,100 housing units in five States and is based in Providence, Rhode Island.

Mr. Bentz is Past President of the Rhode Island chapter of the Institute of Real Estate Management and is currently serving as the Chair person of the Legislative and Emissions Committee. He is both a certified Property Manager with the Institute of Real Estate Management and a registered Apartment Manager with the National Homebuilders Association.

Thank you, John, for joining us today.

Ms. Geraldine Thomas is the current Vice President of the National Alliance of HUD Tenants and has been a resident of HUD-assisted multifamily housing since 1988. She is Chair of the association's mark-to-market task force, which consists of local affiliated groups for providing outreach and training service to tenants in mark-to-market properties in 25 States. Ms. Thomas has

been a board member of the National Association of HUD Tenants since 1997, and served as the association's Vice President since 1998. She was honored in June 2001, by the National Association of HUD Tenants Conference with the organization's Outstanding Organizer of the Year Award.

She is an active member of her community and we thank her for being here. Her community is in the Philadelphia area. Is that correct?

Ms. THOMAS. Yes.

Senator REED. Thank you.

Barbara J. Thompson is Director of Policy and Government Affairs for the National Council of State Housing Agencies. She is representing the publicly Participating Administrative Entities. She oversees the work of the legislative and program staff on regulatory issues related to affordable housing, including banking, tax, budget, appropriations. Ms. Thompson is responsible for keeping member finance agencies informed of Congressional activities. She has served in the New Jersey Governor's Washington office as a senior housing lobbyist under two administrations, former Governors Tom Keane and Brendan Byrne.

Cathy Vann is representing the private PAE's. She is the President of Ontra, a participating administrative entity for OMHAR. During her 15 years' tenure at the Ontra companies, Ms. Vann has been involved in the due-diligence, asset management and disposition of more than $8.5 billion in distressed mortgage and real estate assets in 45 States and Puerto Rico.

Ontra, as a private PAE in the Mark-to-Market Program, has been awarded 118 full debt restructures, 120 rent restructures, and 22 comparability reviews since their July 1999 contract inception.

And we thank her for joining us.

Finally, Mr. Charles Wehrwein is the Vice President of Mercy Housing, one of the largest nonprofit developers, owners and managers of service-enriched affordable housing in the United States. His responsibilities include leading Mercy's acquisition initiative, which is focusing on acquiring and preserving portfolios of existing affordable housing complexes across the country.

Mr. Wehrwein also oversees the Mercy loan fund and the Mercy housing development division. And prior to joining Mercy, Mr. Wehrwein served in various capacities, including Chief Operating Officer with the National Equity Fund, the largest nonprofit syndicator of low-income housing tax credits.

And he has had previous experience in the Federal Government at HUD, and we thank him for joining us today.

Mr. Wehrwein, would you begin, please?

Senator ALLARD. Mr. Chairman, I would just like to personally welcome Mr. Wehrwein to the Committee and we look forward to his testimony.

Senator REED. Thank you, Senator.

STATEMENT OF CHARLES WEHRWEIN, VICE PRESIDENT MERCY HOUSING, INC.

Mr. WEHRWEIN. Thank you, Mr. Chairman, and Senator Allard, for your kind words.

I wanted to say that my comments also reflect the input of several other significant community development organizations, including the National Housing Trust, LISC, the Housing Partnership Network, and NEFPI.

Mr. Chairman, Mercy Housing and others in the community development field regard the preservation of affordable rental housing as essential to the stability and revitalization of communities and the residents who so desperately need this housing, both now and in the future.

Before commenting on the specific issues and policies around the mark-to-market subject, I would like to share with the Subcommittee a specific example of mark-to-market in action, if I may.

Mercy Housing owns a 106 unit Section 8 assisted property in Denver, Colorado. This property serves the transitional housing needs of distressed families. Our Section 8 contract expired and we were eligible for mark-to-market, and we have entered that process and expect to close on our transaction within the next month or so.

An example of a typical resident at Decatur Place, which is the name of this property, is Caroline Garcia. She and her four children escaped an abusive relationship with nothing more than the clothes on their backs. She had no education when she arrived at Decatur Place. Her first month there, she was only able to contribute $4 per month toward the rent at the apartment. She immediately went to work part-time at the cafeteria where her children attended school. She took life skills training provided by Mercy onsite, including parenting, financing and computer training, and she began her education process. In just 2½ years, she has completed her education and is now working full-time as a medical transcriber. Her children are healthy and strong, and doing better in school than they ever have, and she is now contributing $386 a month toward rent. Were it not for the Mark-to-Market Program, this property could not have been sustained at this level.

As to the progress of restructurings, clearly, they began far too slowly. But I think now have picked up dramatically. In our view, it is solely because of the new owner and nonprofit incentive guidelines that were adopted by OMHAR in the fall of 2000. They were created through a cooperative approach that brought together stakeholders from across the spectrum. It has been a great example of how Government should work.

These new guidelines, among other things, have encouraged the nonprofits to pursue purchases of mark-to-market properties and owners to submit to the mark-to-market process.

Prior to these guidelines, it was simply uneconomic to take on these properties. We applaud OMHAR's recognition of the risk of additional affordable housing losses in their response to this problem. Without these incentives, we believe that full restructurings would not have commenced at the pace that they currently have.

Extending the authorities present under MAHRA will allow sufficient time for the backlogs of these complicated transactions to be

completed. It will send a clear and strong message to the entire housing community that Congress is committed to sticking with a consistent program once it works.

We strongly support the extension of authorities beyond their scheduled expiration at the end of fiscal year 2001, and we recommend that Subtitle A, of MAHRA be extended. Furthermore, we strongly encourage the Subcommittee to recognize and affirm the importance of the new incentives and guidelines implemented by OMHAR, as they are critical to the recent success of the Mark-to-Market Program. Finally, we specifically call for the Subcommittee's attention to the need for continued funding of ITAG and OTAG grants at levels equal to or exceeding last year's $10 million.

I would like to turn my comments now toward the experience of working with OMHAR and its team members.

OMHAR was clearly slow getting out of the gate, as you have heard, both in organizing its operations and in contracting with the PAE's. Creating an organization from scratch is difficult and time consuming under the best of circumstances and it seems in hindsight that a period of 3 years to both create the organization and complete all the restructurings was optimistic at best.

Experience with OMHAR's national office staff and consultants suggests that they are extremely competent from a technical standpoint and they reach out and seek information and guidance from many stakeholders.

The assessment of OMHAR's field staff is somewhat more variable, the largest problem being the communication of their national policies and the assurance that those are being carried out.

Experience with public PAE's has been very positive. My personal experience with the Housing Finance Authorities in Colorado and Missouri have been outstanding. Overall, the staff at the public PAE's seems competent and professional and the public PAE's seem to have a better understanding on how to appropriately strike a balance between cost savings and quality affordable housing.

From a programmatic standpoint, we would like to see a more direct linkage between the HFA and other State and local housing resources and preservation, and would strongly support new funding allocated to the States to accomplish this goal. The Federal matching grants provisions of the legislation proposed in H.R. 425 and proposed in the past by Senators Sarbanes, Kerry and Santorum would be an excellent vehicle to accomplish the linking of State and Federal resources and we would strongly support that.

Experience with the private PAE's has also been fairly good, although, again, the communications issue seems to be a bit of a problem. Their nature as profit-motivated entities sometimes pushes them to focus more on the cost elements than the quality elements of housing in their locales.

In conclusion, whatever the reasons for the delays in getting OMHAR off the ground, it is now working. It is a singular business-like unit in the Federal Government that is competent and improving and it would be a waste of the taxpayers' resources invested to date, to let it expire, or otherwise reconfigure it, just as it is beginning to reach its potential.

The work that it was created to do is not yet done. It is a small, lithe organization with specific technical skills that allow it to be

responsive to stakeholders and objectives judged by Congress. Therefore, I urge you to extend the OMHAR organization in its current configuration by extending Subtitle D of MAHRA.

Thank you, Mr. Chairman. That concludes my testimony.

Senator REED. Thank you very much, Mr. Wehrwein, not only for the substance of your testimony, but also for your length.

If I could urge everyone to stay as close to 5 minutes as possible, it would be appreciated. We want to have time for questions.

Your written statement will be included in the record if you want to summarize also.

Ms. Thompson, please.

STATEMENT OF BARBARA J. THOMPSON
DIRECTOR OF POLICY AND GOVERNMENT AFFAIRS
NATIONAL COUNCIL OF STATE HOUSING AGENCIES

Ms. THOMPSON. Thank you, Mr. Chairman.

Mr. Chairman, I am Barbara Thompson, Director of Policy and Government Affairs for the National Council of State Housing Agencies.

The NCSHA represents the Nation's State Housing Finance Agencies. Rick Godfrey of your own State of Rhode Island, Mr. Chairman, serves on NCSHA's board and is a member of its Executive Committee.

Thank you for this opportunity to testify about the Section 8 restructuring program and the experience of HFA's serving in it. First, though, Mr. Chairman, I would like to thank you and Senator Allard and the many Members of this Subcommittee who cosponsored and helped enact legislation in the last Congress to increase the caps on housing bonds and the Low Income Housing Tax Credit.

Unfortunately, even with these increases, many qualified for bonds and credit help simply will not get it. Three obsolete program provisions prevent it.

Senate bill 677 fixes these problems. We would appreciate your cosponsorship and that of your Subcommittee colleagues, and ask you to encourage your leadership to please include it in a tax bill this year.

NCSHA and the Nation's State HFA's worked very closely with the Congress to create the restructuring program. With the support of Congress and the industry, we assured that qualified HFA's had a priority right, Senator, to serve as restructuring agents. We knew that HFA's would carry out restructurings in a manner that protects the interests of the Federal Government and at the same time, the properties, the residents, and the surrounding communities. Regrettably, OMHAR has failed to utilize the expertise of HFA's. Instead, OMHAR has treated HFA's as robots, prescribing their every move, stifling their judgment and their creativity.

Accordingly, though we urge the Subcommittee to reauthorize the restructuring program, we encourage you to turn its responsibility, responsibility for its administration, over to HUD. We also recommend that you direct HUD to streamline its many, many rules and regulations and devolve greater decisionmaking to the State HFA's, as Congress always intended.

State HFA's have been strong and successful partners with the Federal Government when it has permitted them to do their job with their own expertise and experience.

Congress intended States to have decisionmaking authority and flexibility when it gave them the priority to serve as PAE's. Chairman Bond at the time said:

> Devolving responsibility and decisionmaking to the State and local level is one of the primary goals of this Mark-to-Market legislation.

Senator Mack, author of the legislation, said:

> I expect HUD to approve many HFA's as PAE's and provide them as much flexibility as possible within appropriate parameters to administer the (permanent) program.

However, OMHAR either never understood that or chose to ignore Congress' will. Instead, it chose to do the restructuring work. From the start, OMHAR has dictated down to the finest detail every step HFA's must take in restructuring properties. It has denied HFA's the ability to apply the very expertise, judgment, knowledge of their local markets, concern for their properties and communities and tenants, that caused Congress to choose them to do this work in the first place.

Despite Congress' many admonitions about streamlining the program and utilizing HFA's, OMHAR changed little until the Senate Appropriations Committee last fall told them that its functions would be transferred to HUD. Since then, OMHAR has made some progress, but too little, in our opinion, and very late. Though it finally reduced the requirements of its operating procedures guide, the changes it contains still do not go nearly far enough toward streamlining and simplifying the program.

OMHAR continues to value process over product, rules over results. Its guidance to PAE's remains overly prescriptive, confusing, needlessly complex, ever-changing, and inconsistently interpreted and applied by its own staff. Its operating guide, Senator, has 22 separate appendices and requires the use of 86 separate forms to process a single transaction. OMHAR issued 79 "policy" emails to PAE's in just the last 14 months. Its financial model, which PAE's must use to calculate the necessary financial outcome in a restructuring, is over 40 pages long and unnecessarily complex. It leaves little room for State judgments.

OMHAR runs a command and control operation. It delegates little authority to its regional offices. Frequently, the regional office will tell an HFA one thing, while the headquarter office tells them another. Communication between OMHAR and HUD is very poor. PAE's are bounced back and forth between OMHAR and HUD for decisions and information.

Many HFA's find OMHAR more interested in saving money than in preserving properties. OMHAR frequently questions HFA market rent and rehabilitation needs assessments, despite its lack of familiarity with the properties and the communities within which they are located.

Policymakers, Senator, will for some time debate the number of Section 8 properties lost and the Federal subsidy savings forfeited due to OMHAR's insistence on doing it its way. But there is another cost—the loss to the restructuring program of State HFA expertise, judgment, experience and commitment to public purpose.

Of the original 42 State HFA's approved as PAE's, only 22 remain in the program today. Some HFA's never signed contracts, believing they could add little value given OMHAR's prescriptive approach. Others have declined to renew, severely frustrated with OMHAR's unreasonable and irrational rules. Still others have been forced out by OMHAR often without explanation. Some remain, but are inactive because OMHAR doesn't give them assets. It gives them instead to the privates without the knowledge of the HFA or their agreement as the law requires.

Your own agency, Mr. Chairman, one of the strongest in the country, last April received written notice from OMHAR that it would not renew its contract. That notice gave no explanation for the termination.

Mr. Chairman, Congress wrote the right plan when it gave priority to public PAE's to carry out Section 8 restructurings. The problem is OMHAR never implemented that plan.

You have an opportunity to insist on the system that you established nearly 4 years ago, a system under which the responsibility for restructuring Section 8 properties is delegated to willing and capable State and local agencies with reasonable Federal oversight and accountability to the Federal Government, the States, communities, and residents.

Thank you very much, Mr. Chairman, for this opportunity to testify and CSHA and the State HFA's are committed to working with you to set the Section 8 restructuring program on the course Congress intended.

Senator REED. Thank you, Ms. Thompson.

John Bentz. John, good to see you here.

STATEMENT OF JOHN BENTZ
PRESIDENT, PROPERTY ADVISORY GROUP, INC.
DIRECTOR OF THE NATIONAL LEASED HOUSING ASSOCIATION

We thank you for the opportunity to appear before you today.

Mr. BENTZ. Same here. It is a pleasure, Senator. I appreciate Senator Sarbanes' comments relative to the timeliness of my visit to this Committee. And I appreciate your hearing me today.

My name is John Bentz. I am President of Property Advisory Group in Providence, Rhode Island. I am a Director of the National Leased Housing Association, on whose behalf I testify today.

As a matter of background, for the past 30 years, NLHA has represented the interests of owners, lenders, housing agencies, and others involved with Section 8 programs, both project-based Section 8 and tenant-based vouchers.

My company alone owns 18 Section 8 properties throughout the country and we currently have several properties undergoing process in the Mark-to-Market or Section 8 renewal program, as they are called.

Today, we will focus our comments on the future of OMHAR and the Mark-to-Market Program. Both issues are of great concern to NLHA members.

The expiration of OMHAR authorization on September 30 raises the question of whether the entity is to continue. It is generally recognized that OMHAR got off to a slow and rocky start and did not hit its stride until about a year ago. The program was new,

OMHAR was not fully staffed, and owners were naturally wary of a program that could have significant negative consequences to the projects and to their investors.

However, at this time, OMHAR appears to be functioning on a higher level. Nearly 140 mortgages have undergone full debt restructuring with 25 to 30 restructurings expected to close each month through September.

Under the direction of Mr. Peppercorn, OMHAR itself has made significant reforms to make restructuring more attractive to owners. These reforms include the possibility of enhanced assessments and project management fees, and allowing interest on the owners' required deposits to reserves as an eligible project expense. In other words, OMHAR has shown that it does listen and responds to concerns raised by the stakeholders.

At this point, the termination of the Mark-to-Market Program does not appear to be practical. Because of the high cost of Section 8 subsidies, a replacement mechanism would be needed to develop with no promise of anything better. The question does arise, however, as to whether or not OMHAR should be continued in its present form or whether the Mark-to-Market Program should be melded into HUD's regular multifamily programs.

My opinion is it should be kept separate.

NLHA feels that OMHAR must retain its functional independence in order to retain its current capacity to process debt restructuring. OMHAR has attracted some very talented and experienced staff members. We believe that their retention is essential to the continuation of the Mark-to-Market Program to avoid causing fatal interruptions. I think this has been discussed at great length in the previous discussions.

We would caution against dismantling OMHAR and simply folding the Mark-to-Market activities into HUD's regular multifamily marketing program responsibilities.

Implicit in our belief that OMHAR should be retained is our view that mortgage restructuring mechanisms as adopted in 1998 should continue as long as Section 8 rents are to be based on comparable market rents.

I believe Mr. Peppercorn mentioned FMR's—are they fair and are they marketable? Sometimes it is debatable.

There are 400 properties that are anticipated to be eligible for debt restructuring in fiscal year 2002 alone. Without the legislative authority to restructure the debt on these properties, the FHA insurance fund will be forced to absorb a high level of mortgage defaults when properties undergo a rent reduction with unsatisfactory burdens being placed on owners and residents.

Although OMHAR has been responsive to a number of suggestions from the housing community, there are other changes that could be made to improve the program. Most would require changes to the statute.

In recognition of our time limitations, I will not explain them in any detail, but simply say that amendments should be made to address: One, owners contributions to rehabilitation costs; two, the inadequacies of market rents in some inner-city neighborhoods and rural areas, which are a very important item; and three, needed

flexibility in certain HUD mortgage programs to improve the Mark-to-Market Program.

Our written testimony provides more details on these issues and NLHA's members are developing more significant legislative recommendations this week which we will provide to the Subcommittee staff.

I thank you for this opportunity to testify this morning.

Senator REED. Thank you very much, Mr. Bentz.

Now, I will call on Ms. Vann.

STATEMENT OF CATHY VANN PRESIDENT, ONTRA, INC.

Ms. VANN. Thank you, Mr. Chairman.

I am presenting this testimony today as the President of and on behalf of Ontra, Inc., as a private PAE for OMHAR. To place my testimony in perspective, during Ontra's 16 year tenure, we have had significant experience dealing with distressed Government assets. The $8.5 billion in assets that we have managed through that 16 years have been with the likes of Texas Housing Agency, FSLIC, FADA, FDIC, RTC, and numerous Texas banks and S&L's, including Southwest Plan Institutions.

In the early 1990's, Ontra received "above average" ratings from all four Wall Street Investor Rating Agencies to facilitate its participation as a Special Servicer and equity partner in over $2.5 billion in distressed mortgage and real estate asset acquisitions with AIG, Citicorp, CS First Boston, and Goldman Sachs. About $1 billion of these assets were in a partnership with the Federal Government through the RTC S and N Series program.

Ontra commenced its contract with OMHAR in July 1999 as one of the first two private PAE's. They were assigned 120 Rent Restructurings, referred to as Lites, 118 Debt Restructurings, referred to as Fulls, and 22 Comparability Reviews, for a total asset count of 260.

In the interest of time, the detailed results are provided for the written record. But to summarize, Ontra has completed 112 of the Lites, 83 of the Fulls, and 21 of the 22 Comp Reviews, for a total of 216 assets that have been either resolved, closed or completed. The statistics of my report are based on these numbers.

In order to provide the services for this contract, Ontra management has historically dedicated 23 individuals to the delivery of the required services and currently has 16 staff members fully engaged in the process.

Much of the remainder of my testimony, the nonstatistical portion, represents the results of my canvassing effort in February of the eight other private PAE's in response to a request from the GAO to participate in a panel regarding the disposition of OMHAR in the Mark-to-Market Program.

Regarding the progress in rent and debt restructurings, as everyone has said, it had a slow start. But from the private PAE's perspective, there were two essential drivers to this.

For the first 12 to 18 months, owners appeared disengaged and largely convinced that if they stalled, the Mark-to-Market would go away and in all fairness, there was little incentive for the owners to participate willingly in the program, given the financial struc-

ture at that time. The owner's incentive package which was introduced in September 2000, has gone a long way to cure this problem. Since January 2001, there has been gaining momentum in the owner community to contemplate, comprehend, and finally, engage the program.

Of Ontra's 195 completed Lites and Fulls transactions, and that includes resolved assets, there were only four opt-outs on Fulls and five opt-outs on Lites. Opt-outs are where the owner has chosen to just completely leave the affordable housing program.

The program is very complex. That is the second driver, the complexity of the program. And I want to stress here that, with all the criticisms of OMHAR, we have a completely different perspective. We think the program is complex. We think OMHAR's response to it has been appropriate.

The following comments I would like to keep in that perspective. There has been significant ramp-up and learning curve maturation involved. The following items will speak to this complexity issue.

The heart of the Restructure Transaction has a 45-page model which includes not only all of the MAHRA business rules written in, but 14 different analytic schedules. There is eight standard real estate mortgage analysis schedules, such as operating budget analysis, long-term capital reserves, debt sizing, amortization, claim sizing, net savings. It includes an additional six schedules to analyze Tenant versus Project-based subsidies, IRP recaptures, Outyear HAP contract recaptures, affordability restrictions, exception rents, and an analysis of the anticipated repayability of the partial payment of claim, all in one integrated proforma.

This is a very valuable tool. It is complex, but it is valuable. And I do not know how we could accomplish what we have accomplished without this sort of tool. Going further on more complexity.

There is a minimum 26 individuals involved, and sometimes as high as 41 we have counted in a single transaction that have to be notified, coordinated, copied and satisfied, including four to five individuals at OMHAR, two to three at HUD, and numerous others such as local housing authorities, owners, property managers, tenants, OTAG's, PCA Consultants, and Appraisers, old lenders, new lenders, four different sets of attorneys and title company personnel.

Once again, that is not an issue that is driven by OMHAR. That is the nature of the beast. That is what it takes to complete a transaction with all the parties, as what we believe the Government has intended us to do.

There are four different closing scenarios. There are different rules and regulations for each of them, the most common of which is a 223(a)(7), in which there are 55 distinct documents, 8 signatories, and 14 distribution parties.

However, in the last 24 months, all of these bases have been effectively covered. The long awaited momentum is currently being achieved. And note that the average time between acceptance and close for a standard Full Debt Restructuring, at least for this PAE, has gone from 15 months for assets assigned prior to January 2001 to 7 months for assets assigned after January 2001, representing a 114 percent improvement.

Regarding the savings to date generated for the Federal Government, based on Ontra's portfolio, there has been an NPV savings on 119 completed and closed Lites and Fulls transactions of approximately $106.3 million of which $63.8 million represented 79 Lites, and that included 19 Fulls that went to Lites. And there is $42.5 million which represents 40 closed or completed Fulls.

The estimated PAE costs to date, at least from our perspective, is about 3 percent of the NPV savings.

Regarding the physical condition of the housing stock, we looked at this from two perspectives. The status of the stock as it came into the program or as it was assigned to us as a PAE, and then the long-term preservation dollars.

As far as the deferred maintenance which was the status of the housing as it entered the program, the program calls for escrowing funds to cure immediate repairs within 12 months after closing.

The repair escrow rehab numbers for Ontra's 31 closings, and we have 21 imminently pending closings which will close in the next 30 to 60 days. Of these 52 assets, we have escrowed almost $5.3 million on 4,683 units, 52 projects, which amounts to about a little over $100,000 per project and about $1,100 per unit. But these numbers are somewhat skewed because five inner-city properties represent about 3 million or 60 percent of this total.

When you look at it overall, deferred maintenance in our portfolio has not been a significant issue.

However, the housing is aged. So from a long-term perspective, the same set of 52 assets closed and pending. The program has allowed us for set-asides of approximately $57.5 million, averaging just over $12,000 a unit to cover the 20 year long-term capital needs. This represents an average of about $614 per unit per year set aside for replacements.

One of the more compelling statistics is that the average reserve deposit prerestructure went from approximately $309 to $439 postrestructure, which represents a 42 percent increase in annual reserve deposits to the replacement reserve accounts. These numbers seem to point to the fact that although it appears that not all of the housing is in terrible shape, but that the program is providing a unique opportunity to reconfigure the economics and provide for the stabilization, if not the rejuvenation of aged housing stock and thereby ensure quality affordable housing into the future.

Regarding the operations of the Office of MultiFamily Housing Restructuring Assistance, in summary, on this issue, I hope that my entire testimony speaks to the fact that the program is very complex by nature. It has achieved definite, significant momentum. And it is providing solid savings while at the same time capitalizing on a unique opportunity to set the economics straight for the Nation's FHA insured Section 8 housing stock, and to ensure continuance, at least in this sector, of quality affordable housing.

OMHAR has been integral to this process and despite the criticism to the program and OMHAR's implementation of such it is my company's opinion that OMHAR has done an admirable job of juggling the priorities of the numerous stakeholders and the parties to the transactions, while at the same time developing well proportioned tools to manage the delivery of a very complex

program. There are three additional items I wanted to address very quickly on a going forward basis.

Senator REED. Could you summarize very quickly, Ms. Vann?

Ms. VANN. Okay. These are okay because they have been said before.

Senator REED. Thank you very much.

Ms. VANN. Thank you.

Senator REED. Ms. Thomas.

STATEMENT OF GERALDINE THOMAS, VICE PRESIDENT NATIONAL ALLIANCE OF HUD TENANTS

Ms. THOMAS. Thank you, Senator Reed.

On behalf of the National Alliance of HUD Tenants, I am pleased to submit these comments on the Mark-to-Market Program. The National Alliance of HUD Tenants, or NAHT, is the Nation's first membership organization representing the 2.1 million families who live in privately-owned, HUD-assisted housing. Our membership today includes tenant groups and area-wide coalitions in 30 States.

I want to thank you and the Subcommittee for the honor of speaking before you today.

Since 1999, NAHT has convened a monthly Mark-to-Market Task Force, which I chair, consisting of the tenant coalitions among NAHT's membership working in the mark-to-market buildings.

The comments we submit today reflect the consensus views of these NAHT affiliated groups, based on their experience with the Mark-to-Market Program on the ground in more than 20 States.

In the interest of time, I refer the Subcommittee to our written statement which explains why many owners have avoided the Mark-to-Market Program or opt for 1 year Section 8 contract renewals and rent reductions, known as OMHAR Lites. I will say though, that the main reason for the low level of owner participation in the mark-to-market was the decision by Congress to make owner participation entirely voluntary.

With a boom economy, owners in many parts of the country have few reasons to go into mark-to-market and restrict their chance to make more money for 30 years.

As long as Congress is unwilling to require owners to renew their expiring Section 8 contracts or to regulate rents for assisted housing, owners will continue to opt-out of HUD programs and demand ever high levels of Section 8 subsidies, renewals from HUD with few repairs as the price for staying in the program. Few owners will choose to go into mark-to-market. The results will be continued loss of affordable housing and missed opportunities for savings in the Section 8 program.

Based on the decisions of NAHT Mark-to-Market Task Force and input from NAHT affiliates from across the Nation, we offer the following recommendations to extend and improve the Mark-to-Market Program this year.

Number one—Extend Mark-to-Market restructuring authority. NAHT joins the emerging consensus that the authority to restructure mortgages to save costs, as outlined in MAHRA, should be extended indefinitely.

Number two—Continue OMHAR as a separate office, reporting to the Secretary. After a slow start, OMHAR is now functioning smoothly and produces results at a steady pace for HUD. To throw sand in the machinery at this time would cause major staff upheaval and confusion that would be both unnecessary and unwise.

Congress should leave the successful Mark-to-Market Program in the separate office where it is located now, reporting to the Secretary of HUD for at least the next few years.

Number three—Redefine OMHAR's governmental mission and transform PAE's into subcontractors for HUD. The experience with PAE's over the past few years shows that turning over HUD functions to State and private agencies is a bad idea. Because of costing more from the tenants' point of view, contracting out is undesirable because it adds to the complexity and confusion for tenants who now have to deal with several agencies rather than one. It is hard to educate the private PAE's in particular about the value and the role of tenant participation in decisions which affect our lives.

So NAHT recommends that Congress define the essential Government functions of the Mark-to-Market Program—preparation and approval of the final MRRAS Plan and review of public and tenant comments and keep them inside of OMHAR.

OMHAR should be allowed to subcontract out specific functions to PAE's or others, such as preparing a capital needs assessment or appraisal in cases where OMHAR staff cannot do them. But basic Government decisions regarding the MRRAS plan should not be privatized.

Number four—NAHT offers several recommendations to improve tenant participation.

A—Improve access to information. Tenants need help from Congress to get assets to project operation budgets and other documents to help HUD expose scams, identify savings, and promote sales to nonprofits.

B—Extend the $10 million set-aside for technical assistance funding. Section 514 of the MAHRA expires on September 30. It is essential that Congress extend this program to continue funding for the well-designed but under-funded tenant assistance program which OMHAR has put in place.

C—Extend time for review of the MRRAS Plan. We recommend that the required time for tenant review of the draft MRRAS Plan be extended from the current 10 to 30 days.

D—Require written response to tenant comments. We recommend that OMHAR and or the PAE reviewing tenant comments respond in writing to these comments as it is required in Federal Environmental Reviews.

E—Require notice to tenants and a required meeting throughout the mark-to-market process. Most important, tenant notice and at least one mandatory meeting should be required of all OMHAR Lites projects. Also, notice to tenants and a guaranteed meeting should be required if a property is being disqualified or kicked out of the program, or if an owner changes its decision and changes to OMHAR Lites, mark-to-market, or opts-out of the program for any changes in property status. Tenants should also be notified if the PAE handling their property changes in mid-stream.

F—Enforce Notice and Duty to Accept requirements when owners opt-out and fix problems with Enhanced Vouchers. HUD has stated publicly and in writing that it does not intend to enforce an owner's duty to accept Enhanced Vouchers in the event owners opt-out, even though Congress clearly required this last year.

Nor has HUD always required owners to follow the 1 year notice to tenants when they decide to opt-out.

Congress should clearly mandate HUD to enforce the law and use this opportunity to fix remaining problems with Enhanced Vouchers, which we describe in our statement.

Number five—Support the Preservation Matching Grant bill to promote sales to nonprofit groups and preservation of mark-to-market buildings. Today, OMHAR does not have access to capital grant source to help nonprofit groups buy and preserve buildings in the Mark-to-Market Program. For properties needing repairs, a capital grant source would also be useful to help owners fix up substandard buildings as part of the MRRAS Plan.

The Preservation Matching Grant bill which passed the House 2 years ago, has been refiled in the House as H.R. 425, and will soon be refiled in the Senate by Senator Jeffords and others. We urge the Subcommittee to hold an early hearing to give this bill renewed momentum.

Number six—Adopt a Regulatory Program to Preserve Affordable Housing. In extending the Mark-to-Market, NAHT believes that the Congress should establish a national regulatory program to limit owners' ability to opt-out, prepay, and obtain windfall profits through high market rents at the expense of residents in affordable housing. It would be far preferable and less costly to preserve at-risk units by regulating owner choice to opt-out of HUD programs.

Adoption of national regulations would send owners flocking to the Mark-to-Market Program and results in major savings to HUD. It would also mean more repairs for substandard buildings and a big increase in owners willing to sell to nonprofit groups.

Number seven—Reaffirm and strengthen HUD and OMHAR's mandate to preserve mark-to-market buildings with project-based Section 8 assistance. While the current program appears to have resulted in only a few voucher conversions, it is premature to conclude that the risk of mass voucherization of HUD housing under mark-to-market has been avoided, as intended by Congress when MAHRA was passed. Congress should use this opportunity to clarify its intent to preserve the maximum amount of mark-to-market eligible stock with project-based Section 8.

Mr. Chairman, thank you for the opportunity to provide testimony to the Subcommittee today. NAHT stands ready to work with the Subcommittee and OMHAR to make the Mark-to-Market Program work better for tenants and the communities.

Thank you.

Senator REED. Thank you very much, Ms. Thomas.

Let me begin the questioning by addressing the same question to each of the panelists beginning with Mr. Wehrwein.

Putting aside for just one moment the placement of OMHAR in HUD, either independent or part of the Housing Office, what is the single most important change we could introduce into a reauthorization bill?

Mr. WEHRWEIN. Senator, I think the most important change that has already occurred has been the incentive guidelines that have made it much more economically feasible to undertake these transactions. They are currently not even in regulatory form. And some more significant support of those guidelines by the Subcommittee and the Senate would be much appreciated.

Senator REED. Thank you, Mr. Wehrwein.

Ms. Thompson.

Ms. THOMPSON. Yes, Mr. Chairman. The most important thing you could do in reauthorizing this program is to instruct HUD or OMHAR, whichever winds up running it, to devolve greater decisionmaking to the State and local governments, as Congress first intended, and cut the paperwork.

Senator REED. Thank you.

John, you have indicated the three issues. One, owner's contribution to the rehabilitation fund; two, the inadequacy of certain market rent in urban areas as a problem; and then, finally, just increased flexibility. Would you want to elaborate on any one of those, or add an additional comment?

Mr. BENTZ. Yes, Senator. The rents that are in the inner-city areas, and when they do a comparable market study, in a lot of cases, do not really come up to what you really need to support and sustain an inner-city development because of the money it takes to run a development of this type and you are doing a comparable market study that shows that the rents that you are getting are excessive and the rents that you are getting are not really excessive because of the items that you have to address in each one of these facilities.

I think we have gone through a couple of mark-to-market studies and we are going through a couple of restructurings. The rents that have showed in the comparable market studies do not really come to what we really need to run one of these developments.

Senator REED. Thank you.

Ms. Vann, what would you propose on behalf of your organization or your perspective in terms of other than the replacement of OMHAR?

Ms. VANN. I would like to make a comment based on the PAE consensus, private PAE consensus on that canvassing that I did. And I think from our perspective, we really feel that the program is working. So, we would prefer not to see many more changes. Now that we have it set in place and we are on a roll, we would like to just continue.

Senator REED. Thank you.

Ms. VANN. I am sorry. I cut off so quickly before, I did not get to thank the Committee. I really do appreciate the opportunity to present testimony today.

Senator REED. Well, we thank you for coming and for your excellent testimony.

Ms. Thomas, your perspective, please? What would you feel would be essential to be included in new legislation?

Ms. THOMAS. Yes, just to make sure that tenants are notified up front and that they are part of the process from the very beginning. I think that is crucial.

Senator REED. How would you evaluate tenant participation so far based upon your experience and the comments from your colleagues?

Ms. THOMAS. In some areas, it is good, and in others, it is not so good. We know that in the beginning, everything was a slow start. But there has been changes made. But we must continue to strive to make it even better.

Senator REED. Thank you.

Let me raise an issue here that was joined directly and indirectly in the testimony. That is, there is a debate about the public versus private PAE's. Many State housing finance agencies have extensive experience—my housing agency in Rhode Island, mortgage finance housing agency, is an excellent one. Yet, for one reason or another, as has been indicated, State PAE's have not done as much work as the private PAE's.

Several questions. Why are the private PAE's doing more? A related question in my mind is, I presume that they are subject to the same paperwork requirements, the same models, the same everything.

I think Ms. Thompson wants to respond. And Ms. Vann, you might want to respond, too.

Ms. THOMPSON. Certainly. I just want to put the numbers in some perspective, if I could, first, Mr. Chairman because I think there is some misconception that somehow the public agencies have done many fewer restructurings than the private agencies. That is not true as a percentage of the assets they have been given. They simply have not been given as many assets as the private sector. And I addressed that in my testimony because the law required when they are an improved PAE, a public PAE, that OMHAR mutually agree with them on the assets that they will receive.

Instead, OMHAR, from the very beginning of this program, has given assets to the private sector without even notifying in many cases the public sector. And in some cases, it has assigned an asset and within 2 weeks will call up the agency and say: You know what? We are moving fast and we want to give this to a private sector entity. We are just going to take it away from you, for no reason related to capacity.

Let me give you the percentages because I think it is very instructive. This comes off of OMHAR's own web site as of yesterday. The public PAE's have completed 29 of the 226 full restructurings they have been given. That is 13 percent. The private PAE's have completed 101 of the 653 Fulls they have been given, 15 percent, just 2 percent more.

Of the Lites, 220 of 258 Lites that the public have been given, they have finished 85 percent of them. Of the 284 of the 355 Lites that the private sector received, they have completed only 80 percent. So the public agencies are actually doing better on the Lites, just 2 percent less on the Fulls restructurings. They simply do not have the assets.

You have to remember, too, Mr. Chairman, that a number have dropped out of the program. Some did not even sign their original contracts because they felt that they just could add no value to such a prescriptive program—Virginia, Pennsylvania, Michigan,

ironically, Governor Engler's agency headed by Jim Logue, who was the Multifamily Assistant Secretary at HUD, under Secretary Kemp, actually was a consultant to the Subcommittee when you wrote this legislation. His agency has withdrawn because they think the program is so overly prescriptive, that they are simply agents. They are not being called upon to use their expertise and they would rather use it elsewhere.

Senator REED. Thank you.

Ms. Vann, I want to give you a chance to respond if you would like to.

Ms. VANN. I guess it is hard to speak to what has happened between OMHAR and the public PAE's because I have been on the outside looking in.

I know from a private PAE perspective, OMHAR possibly making up for the slow start in the beginning and its lining up the infrastructure. It seems like maybe—and this is just kind of a perspective, that the private PAE's or private sector is more driven toward speed and rolling assets and moving them through. And I think that strikes to the heart of the disagreement about the prescriptiveness of the program.

Entities who have done a lot of affordable housing have their way of doing it. And here comes MAHRA, which we believe is a very specific law and you had to have a very specific program to make sure that the statute was implemented correctly and according to what Congress intended.

So it has been a benefit to us. And that is the only ying and yang that I see between the two.

Senator REED. Thank you, Ms. Vann.

Ms. Thompson, before I yield to Senator Allard, if you could just respond.

Ms. THOMPSON. If I could just respond to that comment.

First of all, the numbers do not suggest that they are doing more as a percentage, as I said before. But it is very important that we focus on the point about driven toward speed. This is not a program that should be driven by speed, especially under pressure from OMHAR because they have so much catching up to do.

This is a program where the States have to look at, should look at, everyone should look at the preservation needs of these properties. And what we are hearing from the States, and I am not going to speak to the private experience because I am not familiar with it, is that OMHAR is not allowing them to do what is necessary to keep these properties in low-income use for the long term. You are going to have this problem right back before you in a few years if we do not look at that aspect of the program.

Senator REED. Thank you very much.

Let me turn to the Ranking Member, Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman. And I hope that I am not duplicating a question that you asked before. We juggle several balls in the air at the same time and sometimes it requires us just to step out of the room for a moment or two.

Regarding those properties that we were mentioning in the last panel, what we call the Watchlist properties, these are properties with physical and financial troubles that are being monitored by

the Office of Housing, what do you think should happen with these properties and what should be the role of HUD's Office of Housing?

I thought I would call on you, Mr. Wehrwein, and Ms. Thompson and Mr. Bentz to respond to that question.

Mr. WEHRWEIN. Thank you, Senator.

I share some of the concerns voiced in the previous panel about the adequacy of the Watchlist process. In my estimation, it doesn't portend well for the future of those assets. And I would argue that the HUD Office of Housing Resources is probably insufficient to oversee and manage all of those properties and to assure that, in fact, they are being monitored closely. I just do not think they have the resources.

I would suggest that if the Subcommittee were interested in considering any changes to the legislation in terms of reauthorizing and amending, that one consideration might be that there be consideration given to pushing more of those assets into a required restructuring because, as Ms. Thompson said earlier, I think that in a different category of assets, we are going to see these same assets come before us with some problems in 4 or 5 years.

Senator ALLARD. Ms. Thompson.

Ms. THOMPSON. I would simply add, I agree with Mr. Wehrwein. I would simply add that it is too bad at this point in a relatively new program in terms of how long it has been really fully operating, that we even have a Watchlist. This is the very thing that we were trying to get away from. All of these properties were on a Watchlist technically to begin with, but we are beyond that at this point. But I agree. I think that restructuring should be done to those properties because their long-term health, both physically and financially, managerially, is not assured.

Senator ALLARD. Mr. Bentz.

Mr. BENTZ. Yes, Senator. Thank you. The Watchlist, I think, is a misnomer because the original intent, as two people previously testified, was to get the properties out of HUD, and if you are on a Watchlist, you go back to HUD, to the HUD office, which is something I believe that they were trying to eliminate to begin with.

The restructuring process is somewhat cumbersome and the Watchlist is something that I think they should reevaluate. It is a definite problem.

Senator ALLARD. I would like to address this to, Mr. Bentz, and Ms. Vann, and Ms. Thomas. Last September, HUD released a package of initiatives for property owners participating in the Mark-to-Market Program. How helpful have these initiatives been in bringing reluctant owners to the table from your perspective?

We will start with you, Mr. Bentz.

Mr. BENTZ. I think they have been extremely helpful. We have done a number of deals over the last 2 or 3 years and we have benefited from some of the changes. I think Senator Reed asked me a question a little while ago which it kind of went right over my head with regard to the owner's participation in the 20 percent that is supposed to come up with the restructuring of a particular development.

That has been one of the drawbacks in the entire program, I think, is the 20 percent that the investors basically have to come up with. And in a lot of cases, they just do not want to come up

with the dollars, so they either opt-out or they go through another form of restructuring which is not beneficial to the development.

Senator REED. Ms. Vann.

Ms. VANN. I think it has had a significant impact, made a big difference in our portfolio.

Senator REED. Ms. Thomas.

Ms. THOMAS. I think that, actually, it was a problem in areas because you had owners opting-out and definitely tenants not being aware of anything. So it was not that great for us.

Senator ALLARD. Do you think that offering such incentives could have an unintended effect with some owners and make them hold back from participating in the program and hope that better incentives might come along later?

Ms. THOMAS. Yes.

Senator ALLARD. I would like to have you three answer that.

Mr. BENTZ. Yes. I would say, yes. One of the other drawbacks, especially in the complete restructuring program, is the 30 year obligation. If you are going to go through a restructuring from an owner's standpoint, depending on the area you are in, 30 years is a long time.

Senator ALLARD. A long time.

Mr. BENTZ. I do not think I am going to be here for another 30 years. Maybe my kids will, but I do not think I will be. The 30 years is one of the biggest drawbacks I think in a lot of the programs, to get owners and investors to stay in the program.

Senator ALLARD. You are suggesting that maybe we look at these not so much from a housing aspect, but just almost from a commercial property aspect, where you think in shorter terms, generally.

Mr. BENTZ. Yes.

Senator ALLARD. Ms. Vann.

Ms. VANN. We have not sensed that any of the owners are still holding out for a better deal. We are starting to sense that the owners are saying things like, we just want to get this done. We just want to get through it.

And one of the real positive aspects of the program that I have seen is that owners are very pleased with the amount of rehab and rejuvenation of these properties. It is solving a lot of their problems in that area, also. I do not see any changes in the future that could make much of a difference in what we are doing.

Senator ALLARD. Ms. Thomas, do you want to add anything?

Ms. THOMAS. Just basically that I am not sure what the owners are holding out for, whether they are holding out for more money or not. I do know that we did have problems and still have problems, and that tenants are suffering for it.

Senator ALLARD. Okay. Now the last question, if it is okay, Mr. Chairman.

Senator REED. Please.

Senator ALLARD. Do you think there is anything more program administrators could do to remove barriers to owner participation?

We will start with you again, Mr. Bentz.

Mr. BENTZ. I do not think so. I think, overall, the program that is in place has been, as I said before, somewhat reasonable. I think it is probably the best that we are going to get at this particular

time without specific legislation to address some of the other areas which I mentioned previously.

Senator ALLARD. Okay. Ms. Vann.

Ms. VANN. I think the cost of small loans, it is cost-prohibitive. If there was a way that you could see fit to maybe aggregate and pool loans when they are, say, under $150,000, under $200,000, because what we find, to get lenders to do those smaller loans, the fees are just incredible. And rightly so because the lenders have to do FHA servicing. To justify the effort, they have to charge a lot of fees.

We are left in a limbo area there on the small loans where there are very little options available to the owners. They can come up with cash, but then, that kind of presents a problem for them. So if there could be a way to provide a vehicle for under $200,000, a ready vehicle, then that would be a great improvement.

Senator ALLARD. Ms. Thomas.

Ms. THOMAS. I just think more money should be available so that the folks can go through the process. And hopefully, owners will get on board.

Senator ALLARD. Mr. Chairman, thank you.

Senator REED. Thank you very much, Senator Allard.

Just a final opportunity. You listened to the previous panel. If you have comments with respect to what they said, Mr. Wehrwein, a reaction or comment, on any point that you think should be addressed based on the previous panel.

Mr. WEHRWEIN. Thank you, Mr. Chairman. It sounds to me like there is an awful lot of agreement around the extension of the authorities and the only disagreement is where it lands.

I would just assert that we would attempt to do what would throw the least, I think someone said, sand in the machinery, and try to keep this thing moving along and attempt to react to some of the problems that Ms. Thompson and others have talked about and attempt to fix a machine that is already working.

Senator REED. Ms. Thompson.

Ms. THOMPSON. Yes, I would like to address something that Mr. Peppercorn said in his statement.

He talked about the consolidation of the public agencies under this program. There has been no consolidation. The program provides for no consolidation. What there has been is elimination. They have driven public agencies out of this program. Forty-two agencies, Mr. Chairman, Senator Allard, 42 State housing agencies, including both of yours, applied and went through a rigorous review at HUD and were approved to participate.

Every agency that applied was approved, many more than anyone ever thought would step up to the plate. Now, today, we have 22 participating. And not yours in Rhode Island. And your Colorado agency, Senator Allard, is really struggling. In fact, I spoke with them about a deal the other day and I finally said, look, I do not know what to tell you, except call John Carson because he will help you, and I am very serious. And you will be hearing from them, John, if you haven't. The agencies are very frustrated. They do not have other priorities, as Mr. Peppercorn said. If they did, why would 42 of them have applied? Why would 42 of them have

staffed up and gotten ready to run this program if they had other priorities?

He also mentioned that the State HFA's, that this is very difficult real estate work. It is not just allocating credits or allocating bonds, as though the State HFA's simply handed those out of a drive-through window.

They do rigorous analysis under those programs. They are required to by law. The housing credit is probably the most successful Federal housing program ever, as we saw with the GAO report a few years ago and the fact that you folks increased it in the Congress by 50 percent, 40 percent in the case of bonds, you thought they were working so well.

Why were they working so well? Because the State and local governments make the decisions based on the unique conditions in their States and communities, not Washington.

So to say that the very agencies that can run those programs and run them well and use the same disciplines that they would use under the OMHAR program, are somehow not capable of running this program.

And to somehow say that it is not OMHAR that is complex, it is the program that is complex. OMHAR has created the program. Those 68 forms that are required for each deal are not required by the statute you wrote, not in any way, shape or form.

If you think back to the demonstration that you first authorized as a pilot for this program, it worked very well. But they loaded all kinds of requirements on top of that, requirements that are not necessary. They are not driven by the statute. And we urge you to review that as you look toward the reauthorization.

Thank you.

Senator REED. Thank you.

Mr. Bentz.

Mr. BENTZ. Thank you, Senator. It appears, I think, with past testimony between Mr. Weicher and Mr. Peppercorn, that there is a little bit of friction between the two agencies.

I think it is to the benefit of all of us, and especially for those two gentlemen and their two agencies, to get together to form some kind of an alliance that is going to allow the program to continue.

And if it has to do with the PAE's and get them more involved, I think that that is something that has to happen.

Overall, I think the program has run fairly well over the last 6 months to a year. Everybody has stated that it has taken 3 years to get underway and I think that is—I do not know whether it is justifiable or not justifiable. But it was a very cumbersome task that they had to undertake and I think with the new administration coming in, I think they are going to have to work together to make the program work.

Senator REED. Thank you.

Ms. Vann.

Ms. VANN. I think the comments that I heard today about moving OMHAR into HUD to achieve better efficiencies and consistency of the program is a plus, as long as the personnel can be maintained, so we do not have new learning curves, loss of momentum, et cetera.

Senator REED. Thank you.

Unless Senator Allard has additional questions, you have the last word, Ms. Thomas.

Ms. THOMAS. Thank you. I would just like to see OMHAR stay where it is, and to operate in the way it has been. It is working now. Let's just push forward.

I want to thank the Committee once again for the opportunity to speak before you.

Senator REED. Thank you.

Thank you all for your testimony. There may be written questions and we would request that you respond promptly.

Thank you very much. We are adjourned.

[Whereupon, at 12:04 p.m., the hearing was adjourned.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR JACK REED

Today's hearing is about affordable housing and how to keep it affordable. In particular, we will explore the success of the "MultiFamily Assisted Housing Reform and Affordability Act"—the so-called Mark-to-Market legislation. This law is scheduled to expire on September 30 and we will be attempting to determine how well it has worked and whether it needs to be reauthorized.

Congress passed the Mark-to-Market legislation in 1997 in order to update and restructure Section 8 project-based developments insured by Federal Housing Authority. About 8,500 such projects with over 800,000 units of affordable housing were built in the late 1970's and the early 1980's.

The Federal Government guaranteed that these projects would be built by insuring the mortgages and using Section 8 contracts to guarantee that the rents would be high enough to pay off the mortgages. In most markets, these rents were above market levels. Typically the mortgages for these multifamily dwellings had terms of 40 years and the Section 8 contracts had terms of 20 years.

By the late 1990's, the 20 year Section 8 contracts started to expire and Congress had begun to renew all Section 8 contracts at market rents for a period of only 1 year. In markets in which the fair market rent was higher than the contract rent, a simple renewal of the contract was sufficient to continue supporting the property.

However, in many cases, contract rents remained far above local rents. In these cases, Congress' decision to renew Section 8 contracts at lower market rents was likely to result in rents too low to support the remaining mortgage payments on such properties. As a result, it looked likely that these FHA-insured properties would default, costing Federal taxpayers tens of billions of dollars.

The Mark-to-Market legislation was passed in an attempt to address this problem. It had two objectives: first and foremost, the legislation was meant to preserve affordable housing by putting it on a stronger footing, both financially and physically. Second, the law was designed to reduce the cost to the Federal Government of rental assistance payments.

The Office of MultiFamily Housing Assistance Restructuring (OMHAR) was created to accomplish both of these objectives, with the help of Participating Administrative Entities (PAE's).

Our panel of witnesses, both Government witnesses and stakeholders involved in the restructuring process, will tell us what progress has been made in restructuring the rents and debts of the FHA-insured Section 8 portfolio; the savings such restructurings have generated for the Federal Government; the physical condition of the housing stock that is being preserved; and the effectiveness of the Office of MultiFamily Housing Restructuring Assistance or OMHAR.

We look forward to their testimony.

PREPARED STATEMENT OF SENATOR JON S. CORZINE

Thank you, Mr. Chairman, for holding this hearing and I also want to thank all of the witnesses for appearing here today to help discuss the status of the Mark-to-Market Program and to help us determine what we need to do to continue to preserve the FHA insurance fund while also maintaining safe, quality housing for low-to-moderate income Americans across this country.

Although I am new to the Committee, I believe the issue of affordable housing is of the utmost importance to our Nation. This is especially true in the current economic climate when so many working families are struggling to find access to decent, safe, affordable housing and when economic indicators suggest that we may be facing a downturn. I am looking forward to learning more about the Mark-to-Market Program and to having a productive discussion as to how we may best move this program forward.

Again, Mr. Chairman, I thank you for holding this hearing and I look forward to hearing from our witnesses today.

PREPARED STATEMENT OF SENATOR PAUL S. SARBANES

Mr. Chairman, I want to congratulate you on the occasion of your taking the gavel of the Housing and Transportation Subcommittee. Given your ongoing active interest in these issues, I look forward to your leadership of the Subcommittee.

While the Subcommittee has not yet been officially reorganized, Senator Gramm graciously encouraged us to proceed with this and other hearings as we try to get the work of the Committee done.

Today's hearing is an important review of the status of bipartisan legislation passed in 1997 to deal with the problem of expiring Section 8 contracts on FHA insured buildings. The purpose of that legislation was to reduce Section 8 rents that were above market, restructure the mortgages where necessary, and provide for needed renovation. The result we were aiming for, and seem to be achieving to date, was the upgrading and preservation of valuable affordable housing at rates the Federal Government could afford.

The legislation establishing this "Mark-to-Market" Program, as well as the Office of MultiFamily Housing Assistance Restructuring (OMHAR), which was created to implement the program, expires at the end of this fiscal year. Yet, the need for the program will continue for a number of years to come.

It is our responsibility to decide how we want to proceed with regards to the legislation. It is my intention to work with my colleagues in the Congress and in the Administration to come to a fair determination on how to keep this effort on track.

Again, I want to thank Senator Reed for holding this hearing. He has put together two very good panels of witnesses that provide an opportunity for all the stakeholders to participate. I feel very strongly that the Committee should proceed in a methodical, workmanlike manner in an effort to hear from all interested parties. In the end, this kind of thorough review and comprehensive airing of the issues should result in better legislation. This hearing is consistent with this approach.

Mr. Chairman, I look forward to reading the testimony.

PREPARED STATEMENT OF SENATOR CHRISTOPHER J. DODD

The Mark-to-Market Program got off to a slow start after Congress passed the "MultiFamily Assisted Housing Reform and Affordability Act" in 1997. But in the couple of years that the program has been operating, it has helped put hundreds of housing projects on a more sound financial footing.

It is my understanding that the program has already saved taxpayers $450 million by helping housing projects restructure their debts and reduce their costs so that the Government could in turn reduce the cost of Section 8 vouchers without causing hardship to low-income tenants. Nearly 600 projects have already undergone some type of restructuring under the Mark-to-Market Program and the program appears to be achieving its goals.

When the program started there were about 8,500 projects that were eligible for restructuring. Those projects had more than 800,000 housing units—that is 800,000 places that people call home. And the Mark-to-Market Program can help focus resources where they should be focused on maintaining those units, rather than simply servicing debt. The program has worked well for some, but it could be working well for many others.

In my opinion, OMHAR and the Mark-to-Market Program have gotten off to a good start and it is my hope that the witnesses will provide some insights to explain how we can ensure that the full benefits of the program can be realized.

PREPARED STATEMENT OF JOHN C. WEICHER

ASSISTANT SECRETARY FOR HOUSING–FHA COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

JUNE 19, 2001

Chairman Reed, Ranking Member Allard, distinguished Members of the Subcommittee, thank you for inviting me to testify on the impending expiration of the Office of MultiFamily Housing Assistance Restructuring. As you know, the restructuring authority and the authorization for OMHAR expires on September 30, as part of "The MultiFamily Assisted Housing Reform and Affordability Act." I am here this morning to discuss the Administration's position concerning the future of OMHAR and its legislative authorities.

Before I begin, let me express my appreciation to this Committee for its support of my confirmation as Assistant Secretary for Housing–FHA Commissioner. It is an honor to appear before you today.

I am reminded that the first question from Senator Sarbanes at my confirmation hearing concerned the "Mark-to-Market" Program. Chairman Reed also raised the issue of mark-to-market during the hearing. So it is fitting that my first hearing before this Subcommittee should be on the same subject.

Mr. Chairman, the challenges of HUD's multifamily assisted inventory involve some of the most complex issues that the Department has had to address. I first became involved in this subject 15 years ago as a member of the Hills-Reuss task force. Congress passed legislation in 1987 and again in 1990, but the problems remained unresolved. During the mid-1990's, Congress wrestled for 3 years with the mark-to-market concept before finally passing "The MultiFamily Assisted Housing Reform and Affordability Act" in 1997. The process for dealing with these properties has taken longer than originally anticipated, for a variety of reasons, so we now need to revisit this issue yet again.

Since assuming the position of Commissioner, I have discussed with Secretary Martinez the future of these authorities and the implications for public policy, particularly with regard to the residents of these properties. Discussions within the Administration are still ongoing, and will necessarily involve the Office of Management and Budget, among others, before a final recommendation is made. However, HUD's fiscal year 2002 budget proposal submitted to Congress in April acknowledged the Administration's intention to seek an extension of the debt restructuring authority. In his testimony before the Senate Appropriations Subcommittee last week, Secretary Martinez stated that there continues to be a need for this program, and that HUD would be seeking an extension of the restructuring tools.

There appears to be general support for an extension of the restructuring authority beyond the current scheduled expiration date. The Administration will be submitting legislative recommendations on how best to proceed with that extension.

OMHAR estimates that over 2,500 Section 8 properties have contracts that expire after this fiscal year; approximately 1,300 are estimated by OMHAR to be above market. There is a continuing statutory requirement to mark down rents to market levels. Without the mortgage restructuring tools, it seems likely that many of these properties would default on the mortgages. This would expose FHA to significant claims and place the housing of thousands of families in jeopardy.

The future of the OMHAR office itself has generated a greater level of discussion than the extension of the restructuring authorities. The first few years of OMHAR were less productive than had been hoped for a variety of reasons. In large part, the first 2 years were spent establishing program infrastructure and assigning the properties to the Participating Administrative Entities (PAE's) for restructuring actions.

OMHAR did not complete any restructurings until the fourth quarter of 1999, some 2 years after it was created. These first completions were rent restructurings, without any changes in the mortgage amount. The first full mortgage restructuring did not occur until the second quarter of 2000.

Since then, however, there has been significant progress. OMHAR completed 423 rent restructurings by the end of 2000 and has completed another 63 through May of this year. More importantly, the pace of full mortgage restructurings has picked up sharply this year. There were 30 full mortgage restructurings in 2000, and another 77 so far in 2001. Further, I understand that an additional 75 full restructurings are scheduled for closing in the next 60 days. Since full mortgage restructurings are more complicated, this is encouraging. But clearly more needs to be done, and we want to ensure that this important work is allowed to continue.

In his Appropriations Subcommittee testimony last week, Secretary Martinez also discussed the future organizational structure of OMHAR. He stated that the Department expects to request a 3 year extension for OMHAR with two changes: (1) that the office would no longer be headed by a Presidential appointee, (2) and that OMHAR would fall under the authority of the Office of Housing.

Accordingly, we may recommend to Congress the continuation of a separate OMHAR office dedicated to this work, but under the authority of the FHA Commissioner, rather than maintaining its current position as an independent office. This move would simplify issues of jurisdiction and coordination. At present, the Office of Housing is responsible for subsidy payments and the management of insurance contracts, while at the same time OMHAR is responsible for restructuring them for the future. The same projects are under the jurisdiction of two separate, equal offices, each reporting to the Secretary simultaneously. With OMHAR under the authority of the Commissioner, this anomalous situation would no longer exist. In addition, this proposed structure would facilitate coordination between OMHAR and the 18 Multifamily Hubs, which are located throughout the country and have detailed information and knowledge on any particular property in the field. We

believe the completion of OMHAR's work would be expedited by a simpler administrative structure.

At the same time, we certainly recognize the critical nature of the work under OMHAR, and would have every expectation that the office would be fully dedicated to that work and only that work. Having come halfway through the mark-to-market process, we intend to see it through to completion.

In addition, since OMHAR would be an entity reporting to the Commissioner, we do not expect to recommend reauthorization of the position of OMHAR Director as one requiring appointment by the President and confirmation by the Senate. This would avoid a circumstance where one Presidential appointee reports to another Presidential appointee of equivalent rank.

We understand that the bulk—almost two-thirds—of the 1,300 anticipated properties subject to debt restructuring have contracts that expire in the next 2 fiscal years. With an average processing time of approximately 13 months following contract expiration, we believe an extension of 3 years beyond fiscal year 2001 is appropriate. By 2004, we should all be able to judge whether any further extension is needed, or whether the small remaining workload can be handled within FHA.

Mr. Chairman, OMHAR and the authority it exercises were enacted to strike a balance between the preservation of affordable rental housing and the rising costs of renewing expiring Section 8 contracts. If Congress had not intervened, project-based Section 8 renewal needs would have reached $7 billion annually by 2007. Recently, encouraging progress had been made in preserving the viability of many of these properties. But much work remains to be done. For Secretary Martinez, and for me, the continuation of this work is one of our highest priorities. We look forward to working with Congress and this Committee in the coming weeks on this important issue.

Thank you.

PREPARED STATEMENT OF IRA G. PEPPERCORN

DIRECTOR, OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

JUNE 19, 2001

Mr. Chairman, Ranking Member Allard, and distinguished Members of the Subcommittee, thank you for the opportunity for me to be here today in order to give you a status report on the Mark-to-Market Program. I would like to give you a brief but comprehensive look at what has been accomplished by OMHAR through the Mark-to-Market Program, what remains to be done, and what will be needed in order to allow the Mark-to-Market Program to continue achieving the goals that Congress envisioned in the MAHRA legislation.

At this time I would like to thank Secretary Martinez' Office and John Weicher, Assistant Secretary for Housing—FHA Commissioner, for their leadership and for asking the honest questions about the Mark-to-Market Program's continuation. If continued, I believe their thoughtful analysis will only serve to strengthen the program.

I would also like to recognize the leadership of a man serving on this Committee, Senator Evan Bayh, under whom I had the honor of serving for 8 years.

Let Me Start With A Brief Background On OMHAR

Congress created the Office of MultiFamily Housing Assistance Restructuring (OMHAR) as a semi-independent entity within HUD to address a financial crisis in the Section 8 program for affordable housing assistance. Former Senator Connie Mack noted at the time that an effort to "reform the Nation's assisted and insured multifamily housing portfolio" was needed in order to handle what was termed the most difficult problem in housing at the time. OMHAR has accomplished much and worked hard to meet the challenge of its mission. Unless changes are made to the sunset provision in the MAHRA legislation, OMHAR and its restructuring authority will go out of existence on September 30, 2001. However, the statutory requirement and the need to reduce the rents on expiring above-market, Section 8 contracts will continue. The many goals of the Mark-to-Market Program can be grouped into three categories:

Social

- Preserving affordable housing by maintaining the long-term physical and financial integrity of the privately-owned, publicly-subsidized rental housing insured or held by FHA.

Financial/Economic

- Reducing long-term project-based Section 8 rental assistance costs.
- Reducing the risks of large FHA insurance costs.

Management/Administrative

- Promoting operating and cost efficiencies in Section 8 assisted properties.
- Addressing problem properties by terminating relationships with owners who have not met their obligations and responsibilities to HUD and/or to their tenants.
- Establishing a nationwide network of local public and private entities to administer the Mark-to-Market Program.
- Engaging and organizing tenant and local community participation in the restructuring process to preserve affordable housing.
- Providing a consistent, prudent, and documented process for all participating properties.

The Mark-to-Market Program offers a "win-win" opportunity for the Government, taxpayers, tenants, and communities, as more deals are closed, we are saving more money by reducing excess payments on Section 8 subsidy contracts, while ensuring that the properties involved are on a sound financial footing, and preserving needed units of affordable housing in good condition, thereby meeting the goals of the Mark-to-Market Program.

Almost 900 properties—comprising over 63,000 units—have gone through the mark-to-market process, resulting in *net savings of $895 million.* A big job remains—about *half of the proerties* assigned to OMHAR still remain to be completed.

> In addition to the large number of contracts expiring through the remainder of this fiscal year, there are *3,715 more Section 8 contracts expiring* in the next 3 fiscal years, almost half of which could be above market.
>
> The Mark-to-Market Program is operating efficiently. Part of our management approach has been to integrate constructive feedback from all stakeholders—this has enabled us to incorporate significant improvements in the process. We are operating with an experienced and highly motivated staff and experienced public and private sector contractors (our Participating Administrative Entities or PAE's), we are *running with momentum.*

Let Me Give You A Better Idea of the Scope of the Program

The Mark-to-Market Program is currently facilitating the preservation of over 140,000 units of affordable housing in 1,739 properties. The underwriting requirements of the Mark-to-Market Program ensure that these affordable housing properties will be operated in a manner to ensure their ongoing economic viability and good physical condition. At a time when affordable housing is in short supply in many parts of the Nation, the Mark-to-Market Program provides critically needed continuity to many communities and residents.

A PAE's partner highlighted in his letter of support to the Subcommittee that "discussions regarding OMHAR and the mortgage restructuring process frequently forget the manner in which it impacts the resident—the quality of housing provided to the residents under mark-to-market (M2M) has dramatically improved."

In addition, one of the Nation's largest apartment owners, Denver based Apartment Investment and Management Company (AIMCO), who has 110 projects in the program, considers the Mark-to-Market Program "important to AIMCO and residents in [its] affordable housing portfolio. The program will enable [them] to continue to provide safe and decent affordable housing to qualifying tenants for many years to come while protecting HUD from claims under its mortgage insurance programs. The program is an important element in addressing the affordable housing requirements in the country." Their statement has been submitted to the Subcommittee.

Completed transactions so far have resulted in *net savings of $895 million.* Once all deals in the current pipeline are completed, *we estimate that the savings represent $2.4 billion, while at the same time ensuring that these 140,000 units of affordable housing remain part of the affordable housing stock.* This is not the final tally of mark-to-market savings, since additional properties expected to enter the Mark-to-Market Program between now and the sunset date will generate additional savings. In addition, there are future savings to be captured from the Section 8 contracts expiring over the next 3 to 5 years.

In furtherance of our goals, we have adopted processes that:

- Require the application of national standards for consistency, while enabling solutions tailored to local conditions and community requirements.
- Utilize a small staff of Government employees to leverage both public and private contractors.

- Rely on market-oriented principles to set rents.
- Encourage meaningful participation by tenants in the affected housing units.
- Maintain communications and share information and concerns with all stakeholders, including owners, lenders, HUD offices, tenants, and Government agents, on an ongoing basis.

OMHAR Tackles Many Challenges In Pursuit of Its Mission

As I mentioned earlier, the result of the process is savings to the Government, and to the taxpayer, that are generated even as the affordable housing remains available, and as the physical condition of the housing is improved, when needed.

First of all, the fundamental complexity of the Mark-to-Market Program is due to the nature of the work that must be accomplished in order to restructure a property. These real estate workouts occur in the context of a complex legislative and regulatory environment, and involve negotiations between property owners, PAE's, tenants, lenders, and other community stakeholders.

Some properties, despite having these above market rents, are physically, financially, or managerially stressed even before the rents are reduced. The legislative requirements of the Mark-to-Market Program are explicit regarding transaction costs and cash flow to owners after restructuring and these terms have created difficult hurdles to a successful restructuring for some owners.

In some cases, property conditions or ownership problems have been such that we have not been able to close restructuring transactions or continue project-based assistance; tenant protections and providing vouchers has been a key goal in such cases.

In a letter of support submitted to this Subcommittee, a public PAE partner of ours captured perfectly the challenge we balance every day: "while these [social, financial, and administrative] are admirable goals, they continuously compete with one another and speak volumes about the complexity of the process."

How Has OMHAR Responded To These Challenges?

We have listened to our stakeholders, we have implemented changes where prudent, and we have striven to create as flexible a program as possible within the context of the legislation. As a result, beginning in the fall of last year, we implemented revisions and initiatives to address the concerns of our stakeholders.

First, we introduced additional performance-based incentives for participating owners. Each year after mark-to-market, if a property meets program standards for financial, physical and managerial soundness, the property owners will receive a market level of return on the capital they were required to invest in order to pursue mark-to-market, plus a greater share of property cash flow for that year. We believe this reform is vital for the long-term health of the properties and aligns the interests of HUD and the owner community. We also believe it appropriately rewards owners for achieving HUD's public policy objectives. Purchasers are also eligible for these same performance-based incentives.

Second, we introduced incentives for purchasers, recognizing the additional costs they will incur, over and above costs typically incurred by stay-in owners. This feature was necessary in order to ensure that, whenever an owner chooses to sell a mark-to-market property, there will be a capable and desirable purchaser willing to take over the property and take it through mark-to-market.

We have made use of our statutory authority under MAHRA § 517a5, to forgive second mortgage debt, when appropriate. PAE's may consider second mortgage debt forgiveness for independent, tenant endorsed, community-based nonprofit and public agency purchasers who accept a longer use agreement, agree not to sell the property for a 10 year period, and agree to reinvest a portion of cash flow in the property. This reform is consistent with our statutory responsibility to facilitate transfers when owners desire to sell.

Finally, we introduced reforms to improve the level of communication between OMHAR, PAE's, owners, and purchasers. Specifically, we gave the owners and purchasers the right to receive various important information throughout the restructuring process, and we formalized the notification and appeal processes to give owners and purchasers additional assurances that their point of view would be solicited, heard, and considered.

We have reached an agreement with Ginnie Mae to facilitate the securitization of small mortgage loans created for mark-to-market properties, thereby increasing the availability and decreasing the cost of these small mortgage loans.

We have created a "large owner initiative" under which owners of large portfolios were given the opportunity to centralize processing of all of their properties with one or two PAE's. This initiative is now directly responsible for a significant share of new transactions coming in to OMHAR.

We have responded to concerns and comments received from our PAE partners and greatly streamlined standard program guidance, giving PAE's additional flexibility, and placing a premium on their professional judgment of what is best for each property.

All of these initiatives demonstrate our commitment to a workable program that circumvents hurdles and responds to valid stakeholder issues—all the while continuing to achieve the mission and ensuring public accountability.

We have all come a long way, especially in this past year. But there is still a high level of ongoing activity in the Mark-to-Market Program, and much work remains to be done.

- Closed 126 full restructurings through May 2001—10 more have already closed this month to date.
- Another 27 closings are scheduled for this month.
- 47 more closings are being scheduled at this time.
- 116 transactions are approved and are now in owner negotiations.
- 169 deals are currently in approval stages.
- 331 properties are in due diligence and underwriting.
- Expect approximately 300 new assets will enter the program by sunset.
- Roughly another 1,700 of the 3,500 properties with expiring Section 8 contracts through fiscal year 2004 are expected to be above market.

As you can see, there is more work to do, which will bring more savings and will preserve more affordable housing. We have the infrastructure in place, with a momentum that can be sustained in order to complete the task that Congress envisioned.

OMHAR and its partners are positioned to complete that work. The program is in place. Yes, it took time for the Mark-to-Market Program to build its infrastructure, to work with its partners to ramp up production to our satisfaction, and to the satisfaction of others. But we are now there. The processes work, and we are meeting the goals of the program. Let me detail the resources in place to complete our mission.

Staffing

We currently have 87 staff on board, of which 38 are permanent and 49 are temporary. Chart 6: Two-thirds of our staff is comprised of production staff—meaning overseeing PAE's, reviewing and underwriting deals, and conducting closing and post closing activities: Chart 7: Specifically, three quarters of our field staff that are completing restructurings are term employees—which means that their jobs with OMHAR expire in 102 days.

The staff has exceptional and very diverse backgrounds. As envisioned under the legislation's creation, many have RTC, FDIC workout, and DUS underwriting experience. These staff are trained and experienced and have established effective oversight and direction for the Mark-to-Market Program. I, personally, continue to be impressed by the professionalism of the OMHAR staff and their commitment to boosting production numbers and meeting the goals of the program in the face of the looming September 30 sunset date.

Chart 8: Our partners, the PAE's, are the 3rd parties through which the nitty gritty work of restructuring gets done. At our peak, we had contractual relationships with 51 PAE's (42 publics and 9 privates); and we are now working with 34 PAE's (25 publics and 9 privates). Why did this consolidation happen? There are many reasons we can identify:

- A lack of deal inflow meant that volumes were insufficient for either the PAE's or OMHAR to justify continued participation.
- The restructuring process was much more rigorous and time-consuming than anticipated.
- The mark-to-market restructuring is a "real estate workout" and the ability to negotiate in controversial situations wasn't an expertise that some PAE's had or wanted to develop.
- The various roles of being the Section 8 contract administrator, lending to the local affordable community, developing more housing with some of the owners, and doing mark-to-market restructuring, presented conflicts of interest in some cases.

With approximately 900 deals under our belt, we have developed a stable capacity amongst our PAE's. And let me assure you, we have stellar performers—both public and private.

Given the magnitude of the training, management and oversight efforts required by OMHAR, I think it is important to share with you that the capacity between the public and private PAE's is quite different. The average private PAE manages 66

deals, while the average public PAE manages 7 deals. While OMHAR continues to be committed to the statutory preference for public PAE's, and we are very pleased with the quality of many of the public PAE's performance, when a PAE with very few deals does not perform in a timely manner or does not deliver quality work products, it is very labor intensive with little product to show for the effort. When numerous PAE's with few deals do not perform in a timely manner or do not deliver quality work products, it ties up limited staff resources and impedes production. All nonrenewals to date have occurred in public PAE's, who had capacity, competing priority, and/or performance issues.

It is important to emphasize that public entities continue to play a vital role in the mark-to-market process, even though in certain cases it has not proved appropriate or efficient for them to serve as PAE's. Finance agencies, in their traditional roles as affordable housing lender, tax credit allocator, or allocator of State affordable housing grants and low-interest loan funds, are well positioned to provide new funds to restructured properties. Congress intended this in designating HFA's as part of the restructuring process—to date, however, the public PAE's have brought additional funding to less than a dozen deals. Finance agencies can make the difference between preserving housing for the long term or losing it from the affordable housing stock, by facilitating the use of additional sources of funds that can be instrumental to a successful restructuring. Because States have not typically brought outside sources to OMHAR deals, OMHAR issued clarifications that it does not seek to recoup external funds brought into mark-to-market properties and wants them invested entirely into properties in their States.

In addition, due to their historical working relationships, public entities often have a wealth of information about the properties and owners in their jurisdictions, and about the appropriate level of rents and operating expenses. With this background, with their sensitivity to the challenges facing these properties, and with their established working relationships with community stakeholders—such as tenant associations—public entities are a valuable resource and can play a role in the mark-to-market process. OMHAR staff is currently working with HFA's on strategies for utilizing public entities in roles beyond the PAE's role, in recognition of the value that we think they can add.

We have arrived at a balance in partners, in quality, in oversight, and in timeliness that is working. And we are performing efficiently. To date OMHAR has cost $66.2 million in PAE's staff costs and FHA claims to achieve those savings of $895 million over 20 years. Looking at the present value of those savings—$517 million—still shows a 7.8:1 savings to cost ratio. In other words, for every dollar of cost, we save almost $8.

OMHAR has not yet reached its peak for completions of full debt restructurings. We have seen *improved results* with a significant increase in full restructurings since February. We have assets moving through every stage of the pipeline; we and the PAE's have learned much; we have become more creative in addressing the challenges, and we have improved our timeliness with each passing month. We have developed an expertise not easily or readily able to be replicated. We want to finish the job we signed on to do.

This is echoed by another public PAE partner in a letter of support recently submitted to the Subcommittee: . . . "It would be a travesty for the program to not continue. OMHAR has learned lessons, adapted the program, and built working relationships with PAE's that will allow them to successfully accomplish the goals of MAHRA."

What Do We Need To Complete the Job?

September 30, 2001, the sunset date called for in the MAHRA legislation, is fast approaching. Planning must occur now to determine the Government's approach to reducing rents on expiring Section 8 contracts after the sunset date. Without the legislative authority to reduce a property's mortgage payments when its rents are reduced, HUD will have to watch Section 8 properties struggle with excessive debt burdens. Owners may cut back on maintenance to make ends meet, or default on their FHA insured loans. The residents of these properties are negatively impacted by failing properties. The resulting costs to HUD exceed the costs of restructuring the mortgage debt under mark-to-market.

Furthermore, with over half of OMHAR's staff on term appointments that expire with sunset, the legislative authority to continue their terms beyond sunset and keep this dedicated group of staff together is key to the continued success of the program.

The Mark-to-Market Program and its stakeholders need an assurance of continuity in order to maintain momentum, and to continue to bring its benefits to the affordable housing units with Section 8 contracts that are only now approaching

expiration. The ability to reduce a property's mortgage payments is crucial for the mark-to-market mission of preserving affordable housing at market rents. And we believe it benefits the financial savings goals to address these workouts proactively and with the consistent methodology and process that we have developed.

Mr. Chairman, I believe we have a compelling story to tell. Affordable housing is being preserved for those in need, at a cost savings to the taxpayer. There is nevertheless much work still to be done. I believe with more time we will have a resounding success story to tell.

Thank you, Mr. Chairman, I would be pleased to answer any questions.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Housing and Transportation, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

For Release on Delivery
Expected at 9:30 a.m.
Tuesday, June 19, 2001

MULTIFAMILY HOUSING

Issues Related to Mark-to-Market Program Reauthorization

Statement of Peter Guerrero

Director, Physical Infrastructure Issues

GAO

Accountability * Integrity * Reliability

GAO-01-871T

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the preliminary results of our analysis of various issues relating to the reauthorization of the "mark-to-market" program established by the Multifamily Assisted Housing Reform and Affordability Act of 1997. We expect to report our final results in early July 2001. Our work is being carried out in accordance with the provisions of section 521 of the act, which required us to review the Office of Multifamily Housing Assistance Restructuring's (OMHAR's) administration of the mark-to-market program.

As you know, the mark-to-market program is aimed at preserving the affordability of low-income rental housing while reducing costs to the federal government of rental assistance subsidies provided to low-income households. More specifically, the program provides the framework to restructure insured Section 8 properties in the Department of Housing and Urban Development's (HUD's) multifamily housing portfolio by lowering their rents to market levels when their current Section 8 contracts expire and reducing their mortgage debt if such action is necessary for the properties to continue to have a positive cash flow. Without restructuring, rents for many of the approximately 8,500 properties in HUD's portfolio substantially exceed market levels, resulting in higher federal subsidies under the Section 8 program.

As provided for in the act, OMHAR has contracted with public and nonpublic entities (referred to as participating administrative entities or PAEs) to carry out the mark-to-market restructurings on behalf of the federal government. The participating administrative entities are responsible for developing restructuring plans for the properties assigned to them and submitting the plans to OMHAR for review and approval. The entities perform two types of restructurings. The first type of restructuring, referred to as a full mortgage restructuring, involves resetting a property's rents to market levels and reducing its mortgage debt by the amount needed to permit the property to achieve a positive cash flow. The second type of restructuring, referred to as a rent restructuring, involves reducing the property's rent to market levels, but not reducing its mortgage debt. This type of restructuring generally occurs when the

property is physically and financially sound enough to continue operation at market-level rents with its existing mortgage.

Legislative authorization for the mark-to-market program and OMHAR is scheduled to terminate on September 30, 2001. If authorization is not extended, after that date HUD will still be required to renew Section 8 contract rents at market levels, but the tools established by the act for restructuring mortgages will no longer be available. OMHAR's authority would also terminate and any outstanding mark-to-market responsibilities will be transferred to HUD's Secretary.

Our statement today will focus on three of the issues that we are addressing in our current engagement: (1) the status of the mark-to-market program; (2) factors that have affected the pace of program implementation and the actions OMHAR has taken to address these factors; and (3) the advantages and disadvantages of extending the program past its statutory termination date and of transferring program responsibilities to HUD or keeping them with OMHAR. It also presents matters for the Congress' consideration in debating the reauthorization of the mark-to-market program and OMHAR.

In carrying out the assignment, we analyzed data on the mark-to-market program's status and interviewed representatives from a variety of program stakeholders, including 10 public and 5 nonpublic participating administrative entities. We also convened an expert panel composed of 10 program stakeholders representing OMHAR, HUD, participating administrative entities, lending institutions, tenant associations, Section 8 property owners, and non-profit organizations to discuss the issues that we agreed to address. (See app. I).

In summary:

- As of May 2001, approximately 1,500 properties had entered OMHAR's mark-to-market program. About 60 percent of these properties are expected to receive full mortgage restructurings and the other 40 percent are expected to receive rent restructurings only. OMHAR has completed the restructuring process for 12 percent

of the properties requiring a full mortgage restructuring and 84 percent of the properties requiring only rent reductions. OMHAR estimates that the federal government will realize about $499 million in savings over a 20-year period from the restructurings that it has completed thus far. However, for some properties that do not successfully complete the restructuring process, the requirement to reduce rents to market has decreased the properties' cash flows, thus increasing the likelihood that the properties will develop physical and financial problems.

- Various factors have affected the pace at which the program has been implemented. It took almost 2 years to establish the program's infrastructure and for OMHAR to begin assigning a large volume of properties to the entities that would carry out restructuring actions. Other factors may have slowed the restructuring process as well, including OMHAR's process for reviewing and approving restructuring transactions, the detailed requirements contained in the program's operating procedures guide, and the unwillingness of many Section 8 property owners to participate in the program. However, OMHAR has taken actions to address these factors, and many program stakeholders believe that the pace of the program has improved. Furthermore, while the program has proceeded more slowly than OMHAR originally estimated, many program stakeholders we contacted believe that OMHAR's progress in implementing the program has been reasonable given the program's complexity and the number of tasks that needed to be accomplished.

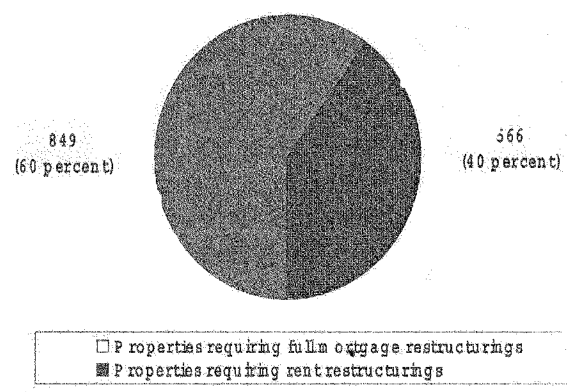
- Extending the mark-to-market program past its scheduled termination date would be more advantageous to the federal government than ending the program. If rents must be marked down to market levels without provisions for mortgage restructuring, many Section 8 properties with above-market rents are more likely to default on their mortgages, resulting in large claims against the Federal Housing Administration (FHA) insurance fund. All of the program stakeholders who participated on our panel support the continuation of the program beyond September 30, 2001. Furthermore, we agree with the view expressed by most program stakeholders that administration of the mark-to-market program should continue to reside in an office dedicated to the program's implementation and that the office should have the resources and

expertise needed to administer the program and to oversee restructuring transactions.

OMHAR Estimates that Completed Restructurings Will Generate $499 Million in Savings But Risks to Some Properties Have Increased

As of May 15, 2001, OMHAR had assigned over 1,400 of the 1,500 properties entering the mark-to-market program to the participating administrative entities for restructuring. As shown in figure 1, about 60 percent of these properties are to receive full mortgage restructurings, and the remaining 40 percent are to receive rent restructurings only.

Figure 1: Number and Percentage of Properties Requiring Full Mortgage Restructurings Compared to Properties Requiring Rent Restructurings

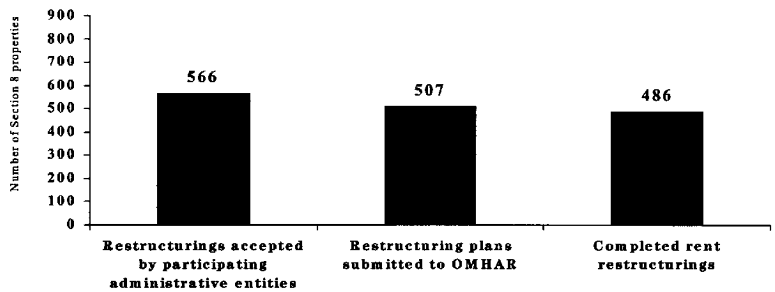


Source: GAO analysis of OMHAR's database

To date, OMHAR has completed substantially more rent restructurings than full mortgage restructurings. As of May 2001, OMHAR had completed 486 rent restructurings or 84 percent of all properties in this category.[1] (See fig. 2.)

[1] OMHAR considers the participating administrative entity's "plan approval date" as the completion of the rent restructuring process while the "closing" date marks the completion for full debt restructurings.

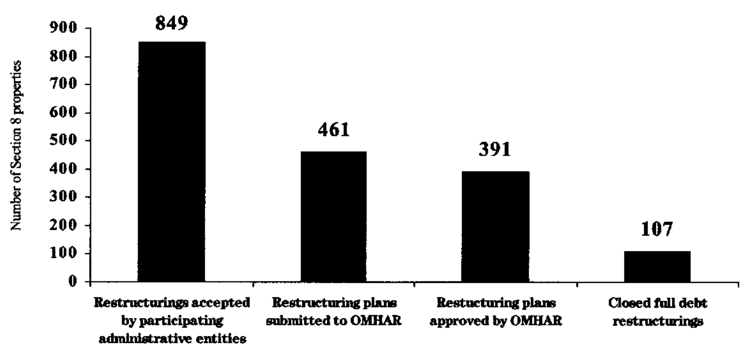
Figure 2: Status of Rent Restructurings in the Mark-to-Market Pipeline as of May 15, 2001



Source: GAO analysis of OMHAR's database

As shown in figure 3, as of May 2001, OMHAR had completed 107 full mortgage restructurings or 12 percent of all assigned and working properties of this type.

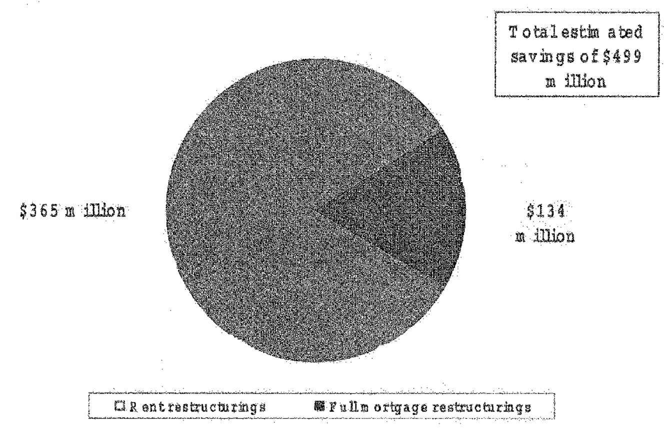
Figure 3: Status of Full Mortgage Restructurings in the Mark-to-Market Pipeline as of May 15, 2001



Source: GAO analysis of OMHAR's database

OMHAR estimates that restructurings completed as of May 15, 2001, will generate approximately \$499 million in savings (net present value) over the next 20 years. Of this total, rent restructurings account for \$365 million in savings and full mortgage restructurings account for the remaining \$134 million. (See fig. 4). These savings result primarily from reductions in the government's Section 8 rental assistance payments after property rents have been lowered to market levels. The savings estimate takes into account costs that the government has incurred as a result of mortgage write-downs, but it does not include OMHAR's or participating administrative entities' administrative costs, which have totaled \$53.9 million as of May 2001.

Figure 4: Estimated Mark-to-Market Program Savings by Type of Completed Restructuring Over 20 years (Net Present Value)



Source: GAO analysis of OMHAR's database

While the mark-to-market program has resulted in Section 8 savings, the requirement that rents be reduced to market levels has increased the risk of physical and financial problems for some properties. For example, the completed rent restructurings include transactions for 76 properties that did not meet OMHAR's underwriting criteria to be

[2]The savings calculations for rent restructurings exclude 74 properties (out of the 486 completed rent restructurings) that did not result in Section 8 savings. The savings calculations for mortgage restructurings include savings resulting from the 107 restructurings that OMHAR has closed and 56 restructurings for which OMHAR reduced property rents but did not complete a mortgage restructuring.

processed as rent restructurings. In other words, these properties received a rent restructuring even though OMHAR's analysis showed that the properties' income may not be sufficient to cover mortgage payments, operating expenses, and ongoing repair needs after the properties' rents were reduced to market. OMHAR said many of these properties should have been processed as full mortgage restructurings, but the Office lacked the legal authority to compel property owners to accept such restructurings. Because of the potential for problems to occur at these properties that could affect the properties' physical and financial condition, in August 2000, HUD's Office of Housing issued guidance establishing additional requirements for its field offices to follow in monitoring these properties. In addition, for 56 properties that OMHAR has processed as full mortgage restructurings, OMHAR reduced the properties' rents to market without completing the restructuring of the properties' mortgages. OMHAR believes that many of these restructurings are unlikely to be completed. While these properties also have an increased risk of problems related to their physical and financial condition that could affect their future viability and also affect the properties' residents, we found that they were not specifically covered by HUD's monitoring guidance. However, HUD has recently agreed to revise the guidance so that it will include these properties.

Factors Cited as Slowing Mark-to-Market Implementation and OMHAR's Actions to Address Them

Establishing OMHAR and implementing the mark-to-market program has been a lengthy process. For example, after the passage of the act creating OMHAR and the program in October 1997, it took a year for the Director of OMHAR to be appointed. Soliciting, selecting and negotiating contracts with the participating administrative entity was not completed until January 1999 and OMHAR did not begin to assign a large volume of properties to the participating administrative entities for restructuring until July 1999. Other implementation tasks completed during that time included preparing the program's operating procedures guide, issuing regulations, and developing an Internet-based tracking system to monitor mark-to-market activities. While these tasks were completed behind OMHAR's original schedule, OMHAR said the delays were due to the normal challenges associated with starting a new organization. Appendix II presents a timeline showing when key mark-to-market implementation tasks were completed.

Some program stakeholders believe that other factors have also slowed the implementation of the program. These include:

- Requirements contained in the program's operating procedures guide, which some stakeholders believed were too extensive;

- OMHAR's review of restructuring plans, which some participating administrative entities regarded as excessive and often not resulting in improvements to the restructuring plans;

- Some Section 8 property owners' unwillingness to cooperate in the restructuring process; and

- Some participating administrative entities not submitting timely and high quality restructuring plans to OMHAR for approval.

In an effort to increase the program's production, OMHAR has taken action to address the factors cited as slowing the program's implementation. These actions include:

- Streamlining the policies and procedures found in the operating procedures guide to simplify the process;

- Conducting a seminar with the OMHAR staff who review the restructuring plans submitted by the participating administrative entities to emphasize OMHAR's commitment to production, discuss review requirements, and solicit input on simplifying the process;

- Introducing an incentives package to make participation in the program more attractive for owners; and

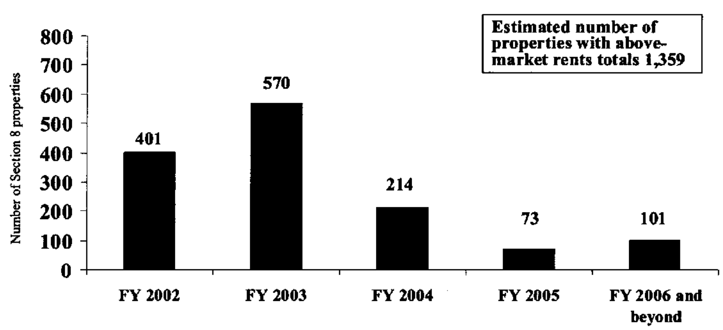
- Organizing special teams to assist participating administrative entities in the completion of restructuring transactions.

OMHAR and others believed the program has gained momentum and that the pace for completing restructurings has improved. Many stakeholders, including over half of the participating administrative entities we contacted, believed that the time required to complete the restructurings has decreased. Furthermore, while implementation of the program has taken considerable time, program stakeholders noted that the program was more complex than originally anticipated, involved a considerable number of stakeholders, and provided few incentives to encourage owner participation. Many stakeholders we contacted believed OMHAR' s overall progress in implementing the mark-to-market program has been reasonable.

Expiration of Program Authority and Potential Implications

The statutory authority to restructure properties' mortgages under the program expires on September 30, 2001. After that time, when their current Section 8 contracts expire, Section 8 properties with above-market rents that have not entered into a binding commitment with OMHAR will have their rents reduced to comparable market levels without the mortgage restructuring tools available in the program. As shown in figure 5, HUD estimates that over 1,300 Section 8 properties with above-market rents will expire after the scheduled termination of the program.

Figure 5: Estimated Number of Section 8 Properties with Above-Market Rents Expiring Beyond Fiscal Year 2001



Source: HUD's Office of Housing

If mark-to-market program authority is not extended, owners will be placing themselves and HUD at risk of financial losses if their property's reduced rents are insufficient to pay for debt service, reserves, and operating costs. Owners of properties who are unable to operate efficiently at market rents may be forced to decrease expenditures for maintenance and other operating costs in order to remain current with mortgage payments, thereby placing tenants at risk of residing in substandard housing. In addition, the FHA insurance fund is likely to be adversely affected if property owners that are unable to meet their financial obligations eventually fail because proper restructuring tools were not available.

Our work has found that consensus exists among the program stakeholders we contacted that the mark-to-market program should be extended. For example, all expert panelists agreed that allowing the program to expire would increase the likelihood of Section 8 property defaults and large claims against the FHA insurance fund. Panelists had different recommendations on the length of program extension ranging from 3 years to an indefinite extension. For example, one said that if there is a legal requirement to reduce the rents to market, there should always be a corresponding authority to restructure the debt. Several panelists also emphasized that a decision on extending program authority is needed as soon as possible.

Loss of Dedicated Office to Administer the Program Could Affect Program Momentum and Reduce Expertise

OMHAR's legislative authority to administer the program also expires on September 30, 2001. After that, OMHAR's authority and responsibilities are transferred to HUD's Secretary. A preliminary transition plan, provided to the Congress in December 2000, sets out three options for the transfer of OMHAR's responsibilities to HUD:

- HUD could maintain an organization resembling the current structure at OMHAR;
- HUD could create an organization resembling a reduced OMHAR in HUD's Office of Multifamily Housing; and
- HUD could merge restructuring responsibilities into HUD's 18 Multifamily Hubs.

Our work has found that significant concern exists among many program stakeholders regarding the transfer of program responsibilities to HUD's Office of Multifamily Housing. For example, 9 out of 10 expert panel members and 8 of out 15 participating administrative entities indicated that OMHAR should be allowed to continue administering the program. These parties cited a number of problems that could arise if the program were transferred to HUD's Office of Multifamily Housing and, particularly, if the responsibility were assigned to HUD's Multifamily Hubs.[3]

Transferring responsibilities to another location in HUD without dedicated staff to administer the program could disrupt momentum. In addition, loss of expertise could occur if OMHAR staff are not retained. According to OMHAR, 57 percent of the 89 staff currently employed with OMHAR have limited terms and do not have reemployment rights with HUD. OMHAR said most of the staff with limited terms (about 75 percent) are those with production experience. According to OMHAR's Director, if OMHAR is not extended it would be necessary for HUD to obtain approval from the Office of Personnel Management to extend their terms. Furthermore, the act allows OMHAR staff to receive higher pay than comparable HUD employees. Accordingly, OMHAR believes that unless the provisions allowing higher pay are extended, a substantial number of the remaining staff may choose to leave. There was also concern that even if OMHAR staff transferred to HUD's Office of Housing, unless they were assigned to a specific office focused on the mark-to-market program, they could be dispersed to work on other HUD multifamily programs.

There was also concern that HUD's Office of Multifamily Housing may lack the capacity to effectively administer the program if OMHAR staff are not retained and responsibility for the program is shifted to HUD Multifamily field offices. A survey that we conducted of HUD field office managers in September and October 2000 supports this view. The survey found that 71 percent of the HUD field office managers believed that their offices do not have sufficient staff to carry out existing programs and activities. This lack of capacity could, in our view, affect HUD's ability to ensure that the program is being

[3]HUD's 18 Multifamily Hubs and their associated 33 program centers comprise HUD's field offices. The field offices report to HUD's Office of Multifamily Housing.

carried out in accordance with legislative requirements and that the federal government's interests are adequately protected.

However, some program stakeholders favored the transition of program responsibilities to HUD's Office of Multifamily Housing. For example, one expert panelist and 7 out of 15 participating administrative entities believed that OMHAR's authority of the program should be allowed to expire. Reasons cited by the one panelist and the participating administrative entities for transferring program responsibilities included the following: (1) integration of the program into HUD's Office of Multifamily Housing could improve program efficiency with the streamlining of the mark-to-market decision-making process and execution of policies since one office would be administering all aspects of Section 8 properties entering the program; (2) integration of the program into HUD's Office of Multifamily Housing could improve communication and coordination between the participating administrative entities and HUD; and (3) OMHAR's oversight has been too prescriptive and heavy-handed and HUD field offices would be better suited to provide program oversight since the HUD field staff are more knowledgeable about the local rental markets and are more familiar with the Section 8 properties located in their jurisdictions.

Conclusions

If the legislative authority to restructure mortgages under the mark-to-market program is allowed to expire on September 30, 2001, HUD estimates it will have to reduce the rents to market levels of well over 1,000 properties without having the tools needed to mitigate the potential effects of such reductions. If the reduced rents do not provide sufficient revenues for the properties to cover their operating expenses, mortgage payments, and repair needs, owners may be forced to reduce expenditures for maintenance or other operating expenses or may default on their mortgages. Such actions could result in deteriorating property conditions and substantial claims against the FHA insurance fund, which, in turn, could adversely affect property residents and lead to a decrease in the supply of affordable housing. Extension of the program would permit Section 8 property owners with above-market rents and unexpired Section 8 contracts to benefit from the restructuring tools that are currently available and help offset many of the effects that are likely to occur if the program is not continued.

Transferring authority for the mark-to-market program to HUD's Office of Housing could potentially help facilitate the handling of some mark-to-market related functions that have required coordination between OMHAR and the Office of Housing. However, there are concerns that such a transfer is also likely to result in the loss of a substantial number of OMHAR staff unless the terms of existing staff are extended and staff are allowed to continue receiving higher salaries than other HUD staff. A substantial reduction in the number of OMHAR employees assigned to the mark-to-market program could result in additional delays in program implementation and substantially diminish institutional knowledge of program requirements. Furthermore, concerns about the adequacy of staffing in HUD's field offices raise questions about whether HUD would be able to provide comparable program oversight of the mark-to-market program without straining its field office staffs' ability to carry out existing responsibilities.

While the mark-to-market program has brought about successful restructurings resulting in Section 8 savings at a number of properties, at other properties the requirement that rents be reduced to market has increased the risk of physical and financial problems. Those at risk include properties that have not received mortgage restructurings but for which market rents may not provide sufficient income to cover existing mortgage payments, operating expenses, and ongoing repair needs. HUD recognized that these properties may become troubled, and the Office of Housing developed guidance for its field offices to use in monitoring potentially troubled mark-to-market properties. However, the guidance did not explicitly cover all properties that may be at risk. HUD has acknowledged that the guidance should be more inclusive and has agreed to revise it. We plan to review HUD's monitoring of these properties as part of our future work at HUD.

Matters for Congressional Consideration

To permit continued restructuring of Section 8 properties with above-market rents, the Congress should extend Subtitle A of the Multifamily Assisted Housing Reform and Affordability Act beyond September 30, 2001. To ensure that restructurings are completed expeditiously and in accordance with legislative and regulatory requirements, and that the federal government's interests are protected, the Congress should also

extend legislative requirements placing the mark-to-market program under a separate office headed by a director who is responsible for administering the program. Regardless of whether program responsibility continues within OMHAR or is transferred to a separate office elsewhere in HUD, the office should have a sufficient number of trained staff dedicated to program administration.

This concludes my statement. I would be pleased to answer any questions that you or other members of the Committee might have.

Appendix I: Panel Participants

Michael Bodaken, President, National Housing Trust

Scott Chamberlain, Assistant Vice President, GMAC Commercial Mortgage

Shaun Donovan, Deputy Assistant Secretary for Multifamily Housing Programs
U.S. Department of Housing and Urban Development, Office of Multifamily Housing Programs

Isha Francis, President, Benchmark Management Corporation

Michael Kane, Executive Director, National Alliance of HUD Tenants

Denise Muha, Executive Director, National Leased Housing Association

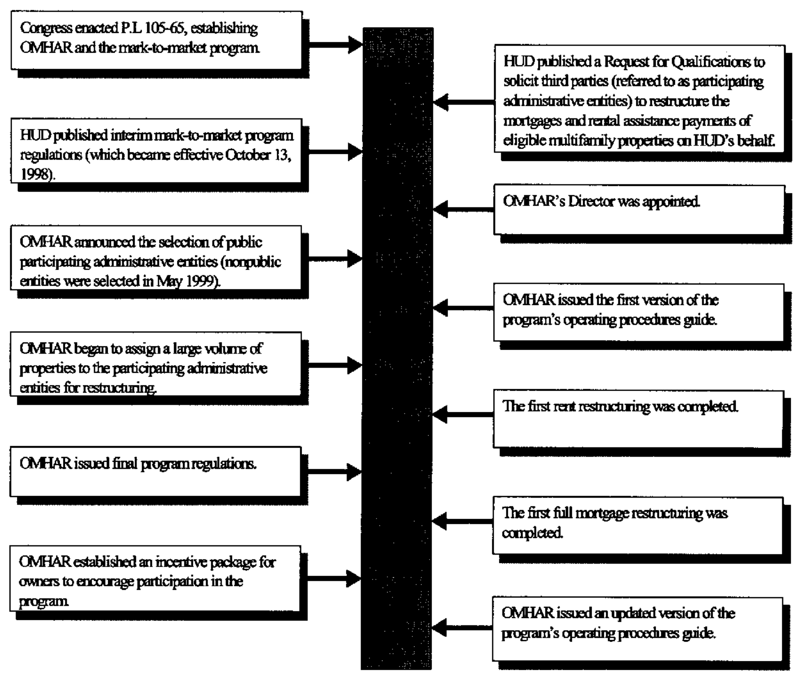
Ira Peppercorn, Director, Office of Multifamily Housing Assistance Restructuring

Garth Rieman, Director for Program Development, National Council of State Housing Agencies

Cathy Vann, President, Ontra, Incorporated

Chuck Wehrwein, Vice President of Acquisitions, Mercy Housing

Appendix II: Timeline of Mark-to-Market Implementation



Source: GAO analysis of HUD data

(545003)

PREPARED STATEMENT OF CHARLES WEHRWEIN

VICE PRESIDENT

MERCY HOUSING, INC.

JUNE 19, 2001

Good morning, Mr. Chairman. My name is Charles Wehrwein. I am a Vice President of Mercy Housing, Inc. and have had direct experience with OMHAR and the M2M Program both at Mercy, and in a previous position with one of the largest nonprofit preservation portfolio acquisitions to date. I appreciate the opportunity to offer my comments today on three issues: the progress being made in restructuring rents and debt of the FHA insured Section 8 portfolio, the experience with the operations of OMHAR and its team—including PAE's—and the savings generated by restructurings and the overall impact on preservation of affordable housing. These comments generally reflect the input of other significant organizations in the community development field including the National Housing Trust, LISC, the Housing Partnership Network, and NEFPI.

Introduction: Mercy Housing

Mercy Housing is a nonprofit affordable housing developer, owner, and manager headquartered in Denver, CO, with real estate interests in many other regions throughout the Nation. In our 20 year history, we have developed nearly 11,000 units of affordable housing serving more than 27,000 low-, and very low-income Americans on any given day. Mercy Housing regards the preservation of affordable rental housing as essential to the stability and revitalization of communities and the residents who so desperately need this housing, both now and in the future. Mercy and others who work in the community development field remain deeply concerned about the future of preservation in general, and the Mark-to-Market Program specifically. To that end, Mercy is launching a targeted preservation initiative that will focus significant human and financial resources on this critical problem.

Case Study: Mercy Housing's Decatur Place, Denver, CO

Before commenting on the specific issues and policies around the M2M subject, it is helpful to add some real context to the discussion. In that regard, I would like to share with the Subcommittee a specific example of M2M in action.

Mercy owns a 106 unit Section 8 assisted property in Denver, CO. This property serves the transitional housing needs of distressed families—that is where a spouse with children has been in an abusive relationship and has had to leave home with virtually nothing. This property's Section 8 contract expired and it was subject to M2M. The M2M restructuring at Decatur is nearly complete and is expected to close within the next month or so.

An example of a typical resident is Caroline Garcia. She and her four children escaped an abusive relationship with nothing more than the clothes on their backs. She had little education and no job when she arrived at Decatur Place. When told she would have to reside in a two-bedroom apartment until a three-bedroom became available, she said it would be much better than the *single room* apartment they just left. Her first month, she was able to contribute only $4 per month for rent. She immediately went to work part-time at the cafeteria where her children attended school. She also took life skills training provided by Mercy at the site, including parenting, financing and computer training. In just 2½ years, she has completed her education and is now working full-time as a medical transcriber. Her children are healthy and strong, and doing better in school. And she is now contributing $386 per month for rent.

This is a great example of the contribution that assisted housing makes in our community. Were it not for the M2M Program and the commitment of staff of OMHAR—both the national office and the San Francisco field office—the Colorado Housing Finance Agency (CHFA), the City of Denver and the committed staff and resources of Mercy Housing, this property could not have been sustained.

Progress of Restructuring of the FHA Insured Section 8 Portfolio

The progress of restructurings, which began far to slowly, has now picked up dramatically. In our view, it is solely because of the new owner and nonprofit incentive guidelines that were adopted by OMHAR in fall of 2000. They were created through a cooperative approach that brought together stakeholders from across the spectrum that is a great example of how Government should work. These new guidelines, among other things, recognize and allow for a more fair economic treatment of nonprofit purchasers relating to the ongoing costs of ownership and provide for some additional debt relief to encourage nonprofits to pursue purchases of M2M properties. The nonprofit buyer, in turn, commits to an extended period of affordable

use. They also provide for improved processing and returns of equity to existing owners that recognize the economics associated with extending affordable use.

Prior to these new guidelines, it was simply uneconomic to take on these properties. While the economics are still marginal under the incentives, they make it probable that long-term nonprofit owners can own and operate these properties over time and actually cover some of the costs of ownership. They also recognize the extended affordability commitment by existing owners and have dramatically increased the number of restructurings that have occurred with this group. We applaud OMHAR's recognition of the inequity in treatment of nonprofit owners and the resultant risk of additional affordable housing losses, and their response to this problem. Without these new incentives, the number of restructurings, especially full restructurings, would not have increased materially and the program would have been a failure.

Extending the authorities present under MAHRA will allow sufficient time for the backlog of these complicated transactions to be completed. It will send a clear and strong message to the entire housing community that Congress is committed to sticking with a consistent approach once it works. This will help to eliminate the potential for stalling by those who would attempt to wait for another program change before acting. It will also allow more nonprofit purchasers to line up the additional resources necessary to help preserve these assets for the future.

We strongly support the extension of authorities beyond their scheduled expiration at the end of fiscal year 2001. We recommend that Subtitle A, of MAHRA be extended for at least 5 years. Furthermore, we strongly encourage the Subcommittee to recognize and affirm the importance of the new incentives and guidelines implemented by OMHAR, as they are critical to the recent success of the M2M Program. Finally, we specifically call the Subcommittee's attention to the need for continued funding of Intermediary Technical Assistance Grants (ITAG) and Outreach and Training Grants (OTAG) at a level equal to the previous years' $10 million per year or higher. We further recommend that the Department expedite the availability of these funds to their intermediaries charged with disbursement.

Experience Working with OMHAR and Its Team

OMHAR was clearly slow getting out of the gate, both in organizing its operations and in naming and contracting with Participating Administrative Entities (PAE's). The reasons for this are many depending on one's point of view. Creating an organization from scratch is difficult and time consuming under the best of circumstances. Add to the mix creating this organization in a politically charged atmosphere where salaries and contracting procedures are more limited than in the private sector, and it seems in hindsight that a period of 3 years to both create OMHAR and complete all necessary transactions was optimistic at best.

Experience with OMHAR's national office staff and consultants suggests that they are extremely competent from a technical standpoint, are willing to work with all stakeholders, and they have worked very hard to get this program underway once the organization was up and running. The consolidated expertise in the national office is especially effective at dealing with the myriad complications that many of these deals bring.

The assessment of OMHAR's field staff from the perspective of many nonprofit stakeholders is more variable. The largest problem overall seems to be the effectiveness of communication of national office policies and positions and the assurance that these policies and procedures are being followed consistently. This problem is exacerbated by the fact that OMHAR has been unable to fill open positions due to their impending sunset. More time to accomplish this important task and more certainty about the future of OMHAR would alleviate many of the problems in this area.

Experience with public PAE's has been mostly positive, and my personal experiences with Housing Finance Authorities in Colorado and Missouri have been outstanding. These PAE's have a very good sense of their markets and the standards housing should meet in those markets. Overall, the staff at the public PAE's seems competent and professional. Public PAE's have a better understanding on how to appropriately strike a balance between cost savings and quality affordable housing.

As with the rest of the M2M implementation, it is taking some time for all of these entities to get up to speed with what is effectively a new program. Like the comment above, time and certainty will improve this experience more still.

From a programmatic standpoint, we would like to see a more direct linkage between HFA and other State and local housing resources and preservation, and would strongly support new funding allocated to the States to accomplish this goal. This leveraging of, and link to, more locally driven housing resources would strengthen the link between the public PAE and the HUD-assisted/insured assets

in their communities. The Federal matching grants provisions of the legislation proposed in H.R. 425 and proposed in the past by Senators Sarbanes, Kerry, and Santorum (Section 401 of S. 2733 introduced last year) would be an excellent vehicle to accomplish the linking of State and Federal resources and we strongly support it.

Experience with the private PAE's has been generally good. As with my comments earlier on OMHAR field offices, communications of national policies and priorities could be improved upon. Their nature as profit-motivated contractors sometimes leads to less ownership of a deal when compared to public PAE's and possibly a focus on cost considerations versus the quality and context of the property at the local level.

In conclusion, whatever the reasons for the delays in getting OMHAR off the ground, it is now working. It is a singular businesslike unit in the Federal Government that is competent and improving and it would be a waste of the taxpayer's resources invested to date, to let it expire, or otherwise reconfigure it, just as it is beginning to reach its potential. This would be analogous to building a factory, creating new tooling, training new employees, and then closing it down just as production got underway. The work it was created to do is not yet done.

Based upon my experience as a Deputy Assistant Secretary for MultiFamily Housing at HUD/FHA, it is my strong feeling that transferring the OMHAR staff into the HUD mainstream will at best, create serious delays of 6 months or more as it is assimilated into the system, and more probably, cripple the program. As it stands today, OMHAR is a model for future Government program operations. It is a small, lithe organization with specific technical skills that allow it to be responsive to stakeholders and objectively judged by Congress. If it is assimilated more directly into HUD, and especially if its wage scale and special contracting flexibility are taken away, many key staff will either leave for the private sector, or be drawn into other responsibilities at the Department. Therefore, I urge you to extend the OMHAR organization in its current configuration by extending Subtitle D of MAHRA for 5 years or more. I would also encourage Congress and the Administration to consider other ways that this technical capacity could be used to deal with more problem assets or asset categories throughout the assisted/insured HUD portfolio. For example, these same skill sets would be useful to HUD in dealing with "work outs"—for example where insurance claims have been paid or where the Secretary has taken ownership of a property through foreclosure.

Preservation and the Cost of the M2M Program

As to the question of the cost effectiveness of the program we cannot provide the Subcommittee with the specific costs of the program versus projections that are 5 years old or more. What we can comment on, however, is the cost effectiveness of preserving this limited and essential affordable housing. Anecdotally, the cost of purchasing, rehabilitating and preserving existing rental housing is often in the range of $20,000–$40,000, which compares very favorably to the cost to build new and/or the permanent loss of potentially hundreds of thousands of units from the affordable housing inventory.

The conclusion here is clear. Even if the marginal cost of restructuring mortgages and reunderwriting projects results in a modest increase in costs—which we do not assume here—failure to act would result in both higher replacement costs and/or the loss of irreplaceable housing resources that the Government has already invested billions of dollars in. Preserving the existing assets and the project-based contracts associated with them is good public policy and good fiscal policy and we believe that OMHAR and the M2M Program are effective tools in accomplishing these public policy goals and should be extended.

Finally, mission driven organizations like Mercy Housing, the National Housing Trust, the Housing Partnership Network, NEFPI, and LISC and its Community Development Corporation partners are ready to help serve the public purpose of preserving the valuable investment that our Nation has made in affordable housing. To that end, these organizations need capital support to be able to preserve and maintain this housing over the long term. We strongly support legislation that would accomplish this like that proposed in Section 402 of S. 2733 introduced by Senators Sarbanes, Kerry, and Santorum last year, with funding limited to those direct and intermediary nonprofit organizations that have a demonstrated track record and commitment toward the development and long-term ownership of affordable housing.

This concludes my testimony. I appreciate the opportunity to be with you today and share our experiences. I would be happy to respond to any questions you have and to work with your staff to follow-up on or amplify any issues brought to light.

PREPARED STATEMENT OF BARBARA J. THOMPSON

DIRECTOR OF POLICY AND GOVERNMENT AFFAIRS
NATIONAL COUNCIL OF STATE HOUSING AGENCIES

JUNE 19, 2001

Mr. Chairman and Senator Allard, I am Barbara Thompson, Director of Policy and Government Affairs for the National Council of State Housing Agencies (NCSHA). I will become NCSHA's Executive Director on July 1.

NCSHA represents the Nation's State Housing Finance Agencies (HFA's). Richard Godfrey of your own State, Mr. Chairman, is NCSHA's Secretary.

Thank you for this opportunity to testify about the future of the Section 8 restructuring program and the experience of State HFA's serving in it. Before I turn to that, however, I want to thank the Chairman, Senator Allard, and the many other Subcommittee Members who cosponsored and helped enact legislation in the last Congress to increase substantially and index for inflation the caps on tax-exempt private activity bonds (Bonds) and the Low Income Housing Tax Credit (Housing Credit). Now, tens of thousands of additional lower-income families each year will buy their first home or rent a decent, affordable apartment.

Unfortunately, many people qualified to receive housing help under these programs still will not get it. Three obsolete provisions prevent it: the Ten-Year Rule, which forbids States to recycle billions of dollars in MRB mortgage payments to make new mortgages; MRB purchase price limits, derived from 8 year old home sales price data, despite dramatic increases in home prices in the last 8 years; and Housing Credit income eligibility rules, which make development infeasible in many very low-income, frequently rural, areas.

Senators Breaux and Hatch introduced S. 677, the Housing Bond and Credit Modernization and Fairness Act of 2001, to fix these problems. Thank you, Senator Allard, for your early cosponsorship. We urge all Subcommittee Members to cosponsor S. 677 soon and to press your leadership and Finance Committee colleagues to include it in a tax bill this year.

NCSHA and our member State HFA's worked very closely with the Congress to help create the Section 8 restructuring program, to preserve Section 8 properties while reducing subsidy costs to the Federal Government. With the support of Congress and the industry, we fought successfully to ensure that the restructuring program provided qualified State and local public agencies a priority right to serve as restructuring agents, to ensure that restructurings were carried out in a manner that protects the interests of the Federal Government, the properties, the residents, and the surrounding communities. Regrettably, the Office of MultiFamily Housing Assistance Restructuring (OMHAR) has failed to utilize the talents of State HFA's, as Congress intended. Instead, OMHAR has treated HFA's as automatons, prescribing their every move and stifling their creativity.

Accordingly, we urge the Subcommittee to reauthorize the restructuring program, but place responsibility for it in HUD's Office of Housing, as both the Senate Appropriations Committee and the Administration have proposed. We further recommend that you direct HUD to delegate responsibility for restructurings on a priority basis to qualified and willing State and local HFA's, with reasonable HUD oversight, as Congress always intended.

State HFA's and the Federal Government Are Strong Housing Partners

During the last three decades, State HFA's have assumed a primary role in financing affordable housing. Their success in blending business-like efficiency with accomplishing their public mission has earned HFA's the respect of the Congress, their States, and the community at large.

Congress, in turn, has entrusted States with administering the Bond and Housing Credit programs, the only Federal programs dedicated to financing lower-income, first-time homebuyer mortgages and low-income apartment construction.

With Bonds and the Housing Credit, State HFA's have financed more than two million first-time, lower-income homebuyer mortgages and over two million apartments, including 1.2 million with the Housing Credit. They have issued nearly $140 billion in Bonds without a default and with foreclosure and delinquency rates far lower than industry averages.

State HFA's have accomplished these outstanding results because Congress has permitted them to employ Federal resources flexibly to respond effectively and imaginatively to their unique and diverse housing needs. Congress has enlisted HFA's to apply their expertise, experience, and knowledge of their communities to

solve housing problems particular to their own States. That is why the Bond and Credit programs are so successful, and that is why Congress increased authority under those programs by nearly 50 percent last year, the largest single increase in Federal housing assistance ever.

State HFA's have also been strong and successful partners with HUD, when HUD has permitted them to use their talent and expertise to do the job. Most recently, 33 State HFA's have successfully assumed HUD's responsibility for the administration of 750,000 Section 8 project-based units. More than 30 State HFA's participate in the FHA–HFA risk-sharing program, under which HUD allows them to use their own proven multifamily underwriting standards, just as they do in the Bond and Credit programs.

Empower the States to Do the Job Congress Intended Them to Do

Congress intended States to have this same decisionmaking authority and flexibility to respond to their housing needs and conditions when it gave them priority to serve as Participating Administrative Entities (PAE's) in the Section 8 restructuring program. HUD Appropriations Subcommittee Chairman Bond, Floor Manager of the Fiscal Year 1998 HUD Appropriations Bill, which contained the restructuring legislation, made that clear on the Senate floor when he said, "Indeed, devolving responsibility and decision-making to the State and local level is one of the primary goals of this Mark-to-Market legislation. Not surprisingly, that is also the reason for the priority in selecting State and local housing finance agencies to be PAE's."

Senator Mack, then Chairman of the Housing Subcommittee, who wrote the restructuring legislation, further elaborated on how Congress expected OMHAR to work with HFA's in a July 1998 Senate floor colloquy with Senator Bond on the Fiscal Year 1999 HUD Appropriations Bill. The Senator said, "HFA's have proven that they have the capacity and willingness to serve as the Federal Government's partners in affordable housing . . . I expect HUD to approve many HFA's as PAE's and provide them as much flexibility as possible within appropriate parameters to administer the (permanent) program."

However, OMHAR either never understood or chose to ignore the Congress' will that HFA's, not OMHAR, do the restructuring work. From the start, OMHAR has dictated down to the finest detail every step HFA's must take in restructuring properties. It has denied HFA's the ability to apply the very expertise, judgment, knowledge of their local housing markets, and concern for properties, communities, and tenants that caused Congress to choose them to do this work in the first place.

In August 1999, NCSHA's Executive Director John McEvoy and Massachusetts Housing Finance Agency Executive Director Steven Pierce, in testimony before this Subcommittee, told the story of OMHAR's heavy-handed micromanagement and bureaucratic interference. With your permission, Mr. Chairman, I would like to submit their statements for this hearing record for the benefit of those Senators who were not then Members of this Subcommittee.

At the time of that hearing, nearly 2 years after the program's enactment, two-thirds of State HFA's approved by HUD to participate as PAE's were still trapped in seemingly endless negotiations with OMHAR on their contracts, OMHAR had released its encyclopedic Operating Procedures Guide (OPG), and not a single full restructuring had been completed.

At that hearing, nearly 2 years ago now, NCSHA strongly urged OMHAR to abandon its prescriptive approach and release the expertise, mission-oriented judgment, and experience of the State HFA PAE's to carry out the work Congress intended them to perform. In response to NCSHA's and his own State's testimony, then Ranking Minority Member Kerry said, "We ought to be able to reduce the bureaucracy, which is everybody's enemy, and see if we cannot streamline this thing in a way that makes more sense."

That same fall, in its HUD appropriations report (Senate Rpt. 106–161), the Senate Appropriations Committee said:

> The Committee is further concerned that the Department's staffing justification for OMHAR does not reflect its roles and responsibilities as envisioned by the "Mark-to-Market" legislation. OMHAR and HUD have not provided the Committee any convincing evidence that 101 staff is needed to run a program that was envisioned to be implemented primarily by publicly accountable third parties, namely State and local housing finance agencies. While the Committee appreciates OMHAR's efforts to ensure public accountability, the Committee is concerned that the procedures and processes in place may be overly prescriptive and potentially result in delaying the completion of transactions. The intent of mark-to-market was to provide as much flexibility as possible within reasonable parameters to allow the

> third parties to perform their duties in an efficient and effective manner. The role of OMHAR was to ensure that proper procedures were in place, qualified and publicly accountable entities were selected to act on behalf of the Federal Government, and to perform post-audit oversight duties after a reasonable period of time and number of deals were completed. It is not evident that HUD and OMHAR have structured the program to meet the intent of the law.

Despite Congress' admonitions, little changed until more than a year later, after the Senate Appropriations Committee recommended in its fiscal year 2001 HUD appropriations report (Senate Rpt. 106–410) that OMHAR's functions be transferred to HUD's Office of MultiFamily Housing beginning in fiscal year 2001. The Committee said, "the program has been fraught with delays due to unnecessary and prolonged negotiations tactics by OMHAR, an overly prescriptive operating guide, and the inability to fully utilize State housing finance agencies that were intended by Congress to administer most of the restructuring activities." The Committee encouraged OMHAR "to streamline the restructuring process and provide the flexibility necessary for the State housing finance agencies to administer the program as intended by the Congress."

Since then, OMHAR has made some progress, though too little, very late. It has completed the restructuring of more than 100 properties, due in significant part to its new owner incentives, which have brought previously reluctant owners to the negotiating table and helped PAE's expedite transactions.

OMHAR also finally reduced the requirements of its OPG, 3 years into the program. It was not until January 2001 that OMHAR issued its completed, revised guide. The changes it contains still do not go nearly far enough toward streamlining and simplifying the program.

Bureaucracy Still Rules

Despite its progress, OMHAR continues to value process over product, rules over results. Its guidance to PAE's remains overly prescriptive, confusing, needlessly complex, ever changing, and inconsistently interpreted and applied by its own staff. The OPG has 22 separate appendices and requires the use of 86 forms to process a single transaction. OMHAR has issued 79 "policy" emails to PAE's in the past 14 months, each containing an average of two to three policy changes.

OMHAR continues constantly to change its requirements and processes, rarely do these changes contribute to meaningful streamlining or program simplification. Often changes are not clearly communicated to the PAE's. Sometimes they are not communicated at all. For example, OMHAR criticized one State HFA for using an "old" form. When the HFA pointed out that it retrieved the form from OMHAR's website and its date was more current than that of the form OMHAR said it should have used, OMHAR told the State to ignore the form on its website, since it had been posted for such a short time, and use the old form instead.

OMHAR's "Financial Model," which it requires PAE's to use to calculate the "necessary" financial outcome in a restructuring, is over 40 pages long, unnecessarily complex and unwieldy, and leaves little room for State underwriting judgments. The model has gone through five revisions, each one resulting in a more complex model than the previous one. Regardless of how far along a transaction might be under one financial model, OMHAR requires that it be submitted for its review under the latest model.

OMHAR runs a command and control operation, delegating little authority to its regional offices. Both OMHAR headquarters and its regional offices review restructuring proposals simultaneously. Frequently, the regional office will tell a State HFA to proceed one way, only to be reversed later in the process by headquarters. In addition, communication and coordination between OMHAR and HUD is poor. Many times PAE's are bounced back and forth between OMHAR and HUD for information and decisions.

HFA's also report that OMHAR's constant second-guessing has resulted in multiple project underwritings, delaying results and undermining their ability to negotiate effectively with owners. Many HFA's find that OMHAR is more interested in saving money than in preserving properties for the long-term. OMHAR frequently questions HFA market rent and rehabilitation needs assessments, despite its lack of familiarity with the properties and local market conditions. For example, OMHAR initially rejected one State HFA's recommendation that an elevator be installed in a multistory elderly housing property with a prolonged high vacancy rate on its upper floors. When OMHAR finally relented and an elevator was installed, the vacancy rate dropped significantly. While the HFA achieved the right outcome for the property, it involved unnecessary hassle and costly delay.

OMHAR imposes very strict timeframes on PAE's, yet it imposes no similar discipline on itself. State HFA's report prolonged delays by OMHAR in responding to their requests. OMHAR frequently loses paperwork, requiring HFA's to resubmit the same information time and time again. OMHAR refuses to relieve PAE's from deadlines which its actions, or more frequently, inaction, cause them to miss.

OMHAR's Internet Tracking System and Resource Desk are seriously flawed and deficient. Costly to establish, they have failed to significantly facilitate the restructuring process. OMHAR scrapped the tracking system for a 2 month period last summer because it was fraught with software glitches. The Resource Desk at last count contained over 1,500 questions, with answers that are often ambiguous and inconsistent with responses to other similar questions.

OMHAR's conflict of interest certification requirements are overreaching. They require PAE's to execute a separate certification for each assigned asset on behalf of all "restricted persons." "Restricted persons" is so broadly defined it includes PAE staff, board members, and third-party contractors and their employees. For one State, this amounts to over 60 individual certifications to accept a single asset from OMHAR. The same State engaged an environmental contractor to complete an environmental review who determined that to meet OMHAR's requirements, the employees of the laboratory performing tests on asbestos and lead-paint samples had to sign certifications!

The Cost of OMHAR's Intransigence

For some time, policymakers will debate the number of Section 8 properties lost and Federal subsidy savings forfeited due to OMHAR's insistence on doing it its way. But there is another cost: the loss to the restructuring program of State HFA's expertise, judgment, experience, and commitment to public purpose.

In August 1999, NCSHA told this Subcommittee that OMHAR had driven at least two qualified HFA's out of the program and was on a course to drive out others. That statement proved prophetic. Of the original 42 State HFA's approved as PAE's, only 22 remain in the program today. A number of those are actively considering withdrawing.

Some State HFA's decided not to sign contracts with OMHAR, believing they could add little value to the program given OMHAR's prescriptive approach. A number participated the first year, but declined to renew their contracts, severely frustrated with OMHAR's unreasonable and irrational rules and failure to assign them assets. Still others have been forced out of the program by OMHAR, often without any explanation. Some remain in the program, but are inactive because OMHAR gives their assets to private PAE's, often without their knowledge or agreement, as the restructuring law requires.

Your own agency, Mr. Chairman, the Rhode Island Housing and Mortgage Finance Corporation (RIHMFC), last April received written notice from OMHAR that it would not renew its contract. In that communication, OMHAR gave no reason for terminating the relationship. OMHAR never granted RIHMFC Executive Director Richard Godfrey's request the previous July for a meeting with its director to discuss Rhode Island's concerns with the restructuring process.

The New Hampshire Housing Finance Agency (NHHFA) recently terminated its contract with OMHAR after OMHAR informed the agency by telephone in late January of its unilateral decision to withdraw NHHFA's first full restructuring asset—assigned earlier that month—and reassign it to a private PAE. In response to NHHFA's letter objecting to the transfer, the OMHAR director wrote, "The decision was solely based on the fact that as of the end of January 2001, due to the limited number of available New Hampshire assets, NHHFA had not yet had the opportunity to undertake a full mortgage restructuring. Consequently, and recognizing admittedly, the complexity of the M2M Program and the learning curve of all PAE's, it did not seem in the best interest of NHHFA or OMHAR for NHHFA to go forward with this, perhaps the only available, full mortgage restructuring. Unfortunately, this was presented to you as a final decision, rather than a point of discussion." I would like your permission, Mr. Chairman, to submit this correspondence, and that of the RIHMFC with OMHAR, for the record.

Implement the Plan Congress Wrote

Mr. Chairman, Congress wrote the right plan when it gave priority to public PAE's to carry out Section 8 property restructurings subject to OMHAR's oversight. The problem is OMHAR never implemented that plan.

With OMHAR's scheduled sunset, you have an opportunity to insist on the system that you established nearly 4 years ago, a system under which the responsibility for restructuring Section 8 properties is delegated on a priority basis to capable and

willing State and local public agencies with reasonable Federal oversight and accountability to the Federal Government, their States, communities, and residents.

We believe the Administration is committed to implementing that system. We urge that the restructuring program be reauthorized, but responsibility for its implementation be transferred to HUD, as the Administration proposes. If OMHAR is retained, it should lose its independent status. Its director should report to the FHA Commissioner. We further recommend that Congress direct HUD to review and streamline OMHAR's rules and procedures and devolve greater decisionmaking authority under it to qualified public HFA's.

Some will say HUD does not have the capacity to take on this responsibility. We disagree. We are not suggesting that HUD perform Section 8 restructurings. We are asking that HUD oversee State and local HFA's and others who qualify to do the restructuring work.

Some will say leave OMHAR alone. It is not perfect, but it is a lot better than it was. We must not settle for that. Too much restructuring work remains to be done. Too much is at stake.

Thank you, Mr. Chairman, for this opportunity to testify. NCSHA and the State HFA's are committed to working with you to set the Section 8 restructuring on the course Congress intended.

PREPARED STATEMENT OF JOHN BENTZ

PRESIDENT, PROPERTY ADVISORY GROUP, INC.
DIRECTOR OF THE NATIONAL LEASED HOUSING ASSOCIATION

JUNE 19, 2001

Mr. Chairman and Members of the Committee: My name is John Bentz, President of Property Advisory Group, Inc. of Providence, Rhode Island and a Director of the National Leased Housing Association, on whose behalf I testify today. I am accompanied by Denise Muha, Executive Director of NLHA and Charles L. Edson, Association Counsel. We thank you for the opportunity to appear before you today.

As a matter of background, for the past 30 years, NLHA has represented the interests of private sector participants in the Section 8 program including owners, managers and lenders, as well as housing authorities and other public officials who administer various HUD programs including the Section 8 Voucher Program. We will focus our comments on this hearing's important issue concerning the future of the Office of MultiFamily Housing Assistance Restructuring (OMHAR) and the Mark-to-Market Program, both of great concern to our members.

The Future of OMHAR

As you are aware, OMHAR's authorization expires on September 30 placing squarely before Congress the issue of whether that entity is to continue. It is generally recognized that OMHAR got off to a slow and rocky start and did not really hit its stride until about a year ago. The program was new, OMHAR was not fully staffed, and owners were naturally wary of a program that could have significant negative consequences to the project and their investors. Indeed, OMHAR did not complete its 100th restructuring until a few months ago—over 3 years from the Agency's creation in 1997.

We have reached a point where OMHAR appears to be functioning at a higher level. Nearly 140 mortgages have undergone full debt restructuring with 25 to 30 mortgage restructurings expected to close each month through September. Further, OMHAR has approved and implemented hundreds of OMHAR Lites—a lowering of Section 8 rents to market without debt restructuring.

Recognizing the need to attract more owners, OMHAR itself has made significant reforms to make restructuring more attractive to owners. These reforms include the possibility of enhanced asset and project management fees and allowing interest on the owner's required deposit to reserves as an eligible project expense. In other words, OMHAR has shown that it does listen and that it can implement significant changes while implementing its program and we anticipate that issues brought to OMHAR's attention will continue to be addressed.

At this point, the termination of the Mark-to-Market Program does not appear practical. Because of the continuing high costs of Section 8 subsidies, a replacement mechanism would need to be developed with no promise of anything better. The question does arise, however, as to whether or not OMHAR should be continued in its present form, or whether the Mark-to-Market Program should be melded into HUD's regular multifamily program activities.

For a number of reasons, NLHA feels that the Mark-to-Market Program must continue to be separately administered. Whether it is administered by an entity called OMHAR or named something else is not the most important question. We would not object if OMHAR were to be continued in its present form. We also understand, however, the argument that the OMHAR Director should report to the FHA Commissioner, and not directly to the Secretary and Congress, and would understand if a decision were made to bring OMHAR into the Office of the Assistant Secretary of Housing.

If this is done, however, we caution you as follows: First, we think it would be a mistake to simply fold the mark-to-market activities into the Department's regular multifamily monitoring activities. Such a move would unduly burden staff already stretched by retirement and attrition. The mark-to-market process is highly complex and benefits greatly from having well trained and specialized staff focused exclusively on its mission. Second, OMHAR has attracted some very talented and experienced staff members. We believe that their retention is essential to the continuation of the Mark-to-Market Program without causing fatal interruption. We understand that moving mark-to-market into the Office of Housing raises some pay rate and other personnel issues. We hope that these can be resolved in order to maintain and build upon the momentum that has been generated, short of dismantling the current OMHAR staff.

Mortgage Restructuring

Implicit in our previous discussion is our view that the mortgage restructuring mechanism adopted in the fiscal year 1998 VA/HUD and Independent Agencies Appropriation Act should continue as long as Section 8 rents are to be based on comparable market data. There are 400 properties that are anticipated to be eligible for debt restructuring in fiscal year 2002 alone. Without the legislative authority to restructure the debt on these properties, the FHA insurance fund will be forced to absorb a high level of mortgage defaults when properties undergo a rent reduction with unsatisfactory burdens being placed on owners and residents.

Changes to Restructuring

Although OMHAR has been responsive to a number of suggestions from the housing community, there are other changes that could be made to make the program attractive to owners—many of these would require changes to the statute. NLHA is holding its annual meeting this week and we will use this opportunity to develop specific legislative recommendations that we will submit to you within the next few weeks. They will likely include the following:

- There is now a statutory requirement that owners share in necessary rehabilitation costs. This creates an unacceptable burden for owners in many instances. We are dealing with older properties by definition, which often need significant rehabilitation. Owners are generally limited partnerships, with general partners who are typically unable to respond to cash calls for any number of reasons. We suggest that the statute be changed to permit the rehabilitation to go forward without the requirement of owner contribution.
- While there is an exception rent standard that would permit the restructuring of mortgages where the comparative market rents are too low to support project operations, the standard is too rigid for productive use in many instances. The Mark-to-Market Program generally, by setting rents in accordance with market comparable properties, results in lower rents for properties located in rural areas and in depressed inner-city urban areas. These are often the properties that need assistance the most.

In this regard, the statute provides that, in most cases, exception rent levels are to be limited to 120 percent of HUD approved Fair Market Rents (FMR's). While on first glance that might appear fair, in fact it results in significant rent reductions for some properties which—because of age, security costs, utility costs, and so forth—require higher rents if they are to be operated successfully. We do not believe that the Government intends to withdraw its support for helping low-income tenants in depressed rural areas, or in impacted urban neighborhoods, but this is what the current program in many cases, requires.

- Similarly, in the case of these exception rent projects, OMHAR and owners must agree on appropriate expense levels on which to build exception rents. In some instances, this has proven impossible, where OMHAR simply disagrees with historical operating costs of properties, and owners are of the belief that the OMHAR-required expense reductions would inevitably lead to the failure of the properties. A better mechanism needs to be found to resolve these issues.

- Properties with insured mortgages and HUD held mortgages are, in some instances, treated differently. Properties with insured mortgages, where some first mortgage debt is to remain, can have those mortgages restructured using Section 223(a)(7). This treatment is not now available for HUD held mortgages, where Section 223(f) refinancing is required. The Section 223(f) process contains many more restrictions, and takes months longer to process, resulting in unnecessary costs and delays. On the other hand, Section 223(a)(7) mortgages have a term limit which ends 12 years after the current mortgage term, which should be made consistent with the Section 223(f) program, that generally provides a maximum 35 year term. Such a change would eliminate the third mortgages that are often required as part of the restructuring. Third mortgages raise additional tax concerns for owners.
- When the Mark-to-Market Program was developed, it was anticipated that full debt restructurings would be processed more quickly than has occurred. We believe, this is because no one appreciated many of the complicated scenarios that arise when dealing with owner issues. Those issues include obtaining limited partner consents, extending partnership terms to coincide with restructured mortgage terms, financing issues, and expense determinations. During processing, when existing Section 8 contracts or contract extensions expire, the owner too often finds that its rents are being reduced to market without the benefit of the restructuring, which is still in processing or negotiation. Thus, the village is destroyed while being saved. Significant additional flexibility is needed on this point.

Overall, we must remember that we are dealing not with a short-term problem, but with a long-term issue. The statute requires that properties going through full debt restructuring commit themselves to at least 30 years of Section 8 usage, as long as Section 8 subsidies are available, and that rents shall increase on the basis of an annual Operating Cost Adjustment Factor (OCAF). The program as now constituted does not provide for a way to increase rents or attract other funds to accommodate unanticipated emergency situations. For example, this year's utility rise in many parts of the country would take a long time to be reflected in OCAF adjustments, if they ever are. Similarly, project specific rehabilitation needs, or increased security needs, which may not be evidenced in market comparable properties, are not being addressed. In other instances, we will find, through hindsight, that project underwriting was not all that it could have been. Some mechanism must be developed to permit flexibility in appropriate circumstances to avoid project failure at a later date.

Thank you very much for the opportunity to share our views. We look forward to working with the Subcommittee as these issues are addressed. Please contact NLHA's Executive Director, Denise B. Muha, with any questions regarding the Association's testimony.

PREPARED STATEMENT OF CATHY VANN

PRESIDENT, ONTRA, INC.

JUNE 19, 2001

Background/Testimony Perspective

I am presenting this testimony today as the President of and on behalf of Ontra, Inc., as a Private PAE for OMHAR. By way of placing this testimony in perspective for the Subcommittee please note that throughout its entire 16½ year tenure Ontra has been involved in the due diligence, asset management and disposition of over $8.5 billion in distressed mortgage and real estate assets in 45 States and Puerto Rico. The clients for whom Ontra has provided professional distressed asset servicing have included but are not limited to the Texas Housing Agency, FSLIC, FADA, FDIC, RTC and numerous Texas banks and S&L's. In addition Ontra has received "Above Average" ratings from all four Wall Street Investor Rating Agencies to facilitate its participation as the Special Servicer and equity partner in over $2.5 billion in distressed mortgage and real estate asset acquisitions with AIG, Citicorp, CS First Boston, and Goldman Sachs. Approximately $1 billion of these acquisitions involved a partnership with AIG and the Federal Government through the RTC S and N Series disposition program.

Ontra commenced its contract with OMHAR in July of 1999. Since contract inception Ontra has been assigned 120 Rent Restructurings (Lites), 118 Debt Restructurings (Fulls) and 22 Comparability Reviews. In the interest of time the following results are provided for the written record and I will address them in summary in the discussion regarding Government savings below.

For Rent Restructurings/Lites

Result	No. of Assets
Assigned	120
Completed	112
Remained a Lite	55
Converted to Full	41
Owner Opt Out	5
Ineligible (Below Market)	8
Withdrawn	3

For Full Debt Restructurings/Fulls

Result	No. of Assets
Assigned	118
Converted to Lite	19
Closed	31
Completed	9
Owner Opt Out	4
Failed Fulls	5
Ineligible (Below Market)	3

In order to provide the services for this contract, Ontra management historically dedicated 23 individuals to the delivery of the required services and currently has 16 staff members fully engaged in the process.

The remainder of my testimony represents the results of a canvassing effort in February of this year whereby I surveyed all of the 8 other Private PAE's in response to a request from the GAO to participate in a panel discussion regarding the disposition of the M2M Program and OMHAR's operations.

Progress in FHA Insured/Section 8 Portfolio Rent and Debt Restructurings

The Program definitely experienced a slow start from the Private PAE's perspective. There were two essential drivers of this situation as follows:

- For the first 12–18 months of the program the owners appeared disengaged and largely convinced that if they stalled, M2M would go away and in all fairness there was little incentive for an owner to participate willingly given the financial structure at that time. The owner's incentive package was introduced in September of 2000 and since January of 2001 there appears to be gaining momentum in the owner community to contemplate, comprehend and engage the program.

The program is *very complex* and has required significant ramp up and learning curve maturation in an ever changing environment. Please note the following items, which speak to the complexity issue.

- The heart of the Restructure Transaction is represented by a 45-page model that includes all of the basic MAHRA business rules. In addition to eight schedules providing standard real estate/mortgage analysis such as Operating Budget Analysis, Long-Term Capital Reserve Analysis, Debt Sizing, Amortization, Claim Sizing and Net Savings it includes an additional six schedules to fully analyze Tenant versus Project-based subsidies, IRP recaptures, Outyear HAP contract recaptures, affordability restrictions, exception rents and an analysis of the anticipated repayability of the partial payment of claim all in one integrated proforma.
- The number of parties/stakeholders to a single transaction is significant and includes at a minimum 26 individuals for each single transaction including at least four to five individuals at OMHAR, two to three at HUD and numerous others including Owners, Property Managers, Tenants, OTAG's, PCA Consultants and Appraisers, and at least four different sets of Attorneys and Title Company personnel.
- There are four different and distinct closing scenarios the most common of which is a 223(a)(7). A single transaction of this type involves 55 distinct documents with 8 signatories and 14 distribution parties.

However over the last 24 months, all of these bases have been effectively covered and the long awaited momentum is currently being achieved. By way of demonstrating this please note that the average time between acceptance and close date for a standard Full Debt Restructuring for this PAE has changed from 15 months for assets assigned prior to January 2001 to 7 months for assets assigned after January 2001 representing a 114 percent improvement in program implementation with time as the measure.

Savings to Date Generated By This Program for the Federal Government

Based on Ontra's portfolio the savings to date are provided for the written record below but in the interest of time is summarized as follows. A total of 119 transactions have resulted in approximately $106.3 million of which $63.8 million represents 79 completed Lites and $42.5 million represents the 40 closed and completed Fulls.

Transaction Type	No. Completed/Closed	20 Year NPV Savings
Debt Restructures Closed	31	$ 32,473,466
Debt Restructures Completed	9	$ 9,976,894
Rent Restructures Completed (Includes Fulls to Lites and Closed Lites).	79	$ 63,800,205
Totals	119	$106,250,545

The Physical Condition of the Housing Stock Being Preserved

One of the key benefits of this program is that it ensures that the assets are now being upgraded systematically. In order to put this into perspective, Please Note:

Deferred Maintenance/Prerestructure Status

The program calls for the escrowing of funds to cure the "immediate repairs" within 12 months after closing. These repairs are what the industry traditionally considers deferred maintenance. The Rehab Escrow Repair numbers for Ontra's 31 closings and 21 eminently pending (next 30–45 days) are as follows:

Total Rehab Escrow	No. Projects	No. Units	Deferred Maintenance	
			Per Project	Per Unit
$5,294,790	52	4,683	$101,823	$1,131

We have found however that there is some skewing in these numbers with five inner-city projects representing just over $3 million (60 percent) of the deferred maintenance. Therefore, it appears that the deferred maintenance is not a major issue at least in this PAE's portfolio.

Long-Term Preservation of the Quality of the Housing Stock

For this same set of 52 assets—closed and pending—the program has allowed for set-asides of approximately $57.5 million ($57,488,155) averaging just over $12,000 ($12,276) per unit to cover the 20 year long-term capital needs of these projects. This represents an average of $614 per unit per year being set aside for replacements.

One of the more compelling statistics from this PAE's closed and pending portfolio is that the average reserve deposit/unit/year was $309 prerestructure and $439 post-restructure representing a 42 percent increase in annual reserve deposits to the replacement reserve accounts. These numbers seem to point to the fact that this program is providing a unique opportunity to reconfigure the economics and provide for the stabilization if not the rejuvenation of aged housing stock and thereby ensure quality affordable housing into the future.

The Operations of the Office of MultiFamily Housing Restructuring Assistance

In summary, this entire testimony speaks to the fact that the program is very complex by nature, that there is definite, significant momentum at the current time, that the program is providing solid savings while at the same time capitalizing on a unique opportunity to "set the economics straight" for the Nation's FHA insured

Section 8 housing stock and to ensure continuance, at least in this sector, of quality affordable housing.

OMHAR has been integral in this process and despite the criticisms of the program and OMHAR's implementation of such it is my company's opinion that OMHAR has done an admirable job of juggling the priorities of the numerous stakeholders and parties to the transactions while at the same time developing well proportioned tools to manage the delivery of a very complex program.

Other Issues of Interest/Concern/Potential Improvements

Based on the February 2001 survey of the private PAE's the following opinions are offered for additional consideration by the Subcommittee.

Advantages/Disadvantages of a Transfer of the Current OMHAR Functions to HUD

1. It was a consensus of the Private PAE's that a transfer of responsibilities to HUD would be a duplication of effort and would entail an enormous loss of momentum, as new personnel attempt to get familiar with the overall program as well as with the status of individual assets.
2. Having the time and ability to apply a robust focus on program results is considered critical by all private PAE's. It was felt that OMHAR with its singular focus is well suited to bring the program to final fruition. It was hoped that at least some consistency in personnel can be maintained.

Program Prescriptiveness

We are aware that OMHAR has received significant criticism regarding the OPG, the Model and other policy and procedure vehicles that they have provided to the PAE's. From our (Ontra's) perspective given the complexity of the statute, the extensive program requirements and the complex nature of the issues involved, the tools provided by OMHAR were an absolute necessity. It occurs to us that if the Federal Government wants to ensure consistent and fair treatment of all the stakeholders, reliable underwriting to ensure that all owners are treated fairly and consistently, and that the result achieved is a fully accountable application of the statute, then the tools provided by OMHAR, in our opinion, have been well proportioned to the task.

Private PAE Compensation

This topic was of major concern among the private PAE's. Although the program was competitively bid, the PAE's did not have the same insight into the intricacies of the program that they now have. The program has not only turned out to be much more involved than originally estimated but also as issues arose during the development of the program over the last 24 months the scope of work expanded quite substantially. OMHAR is currently in the process of considering our concerns and we hope to see a solution soon. We have but one request that whatever incentive compensation changes ensue that they be applied for all assets currently undergoing active restructure or at least make the changes effective as of January of 2001 for any assets not yet closed.

I would like to close by respectfully thanking the Committee for the opportunity to present these views. Thank you.

PREPARED STATEMENT OF GERALDINE THOMAS

VICE PRESIDENT
NATIONAL ALLIANCE OF HUD TENANTS

JUNE 19, 2001

On behalf of the National Alliance of HUD Tenants, we are pleased to submit these comments on the implementation of the MultiFamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). While MAHRA actually encompasses a broader range of Section 8 contract renewal options and programs, we understand that the Subcommittee today is gathering testimony on the implementation of the Mark (Down) to Market Program (M2M) by the Office of MultiFamily Housing Restructuring Assistance (OMHAR) created under the statute. Accordingly, our comments here are limited to our experience with the Mark Down to Market Program in MAHRA.

Founded in 1991, the National Alliance of HUD Tenants (NAHT) is the Nation's first and only membership organization representing the 2.1 million families who live in privately-owned, HUD-assisted housing, including the tens of thousands of

families who may be affected by the Mark-to-Market Program. Our membership today includes voting member tenant groups and 45 area-wide tenant coalitions or organizing projects in 30 States and the District of Columbia. We are governed by an all-tenant Board of Directors elected by member organizations from all 10 of HUD's administrative regions at our annual June Conference. I have served as a NAHT Board Vice President since 1998, and currently Chair NAHT's Mark-to-Market Task Force. I also serve as the President of the Philadelphia Regional Alliance of HUD Tenants (PRAHT), which organizes tenants in the Philadelphia area, and thus have direct experience in organizing tenants in the M2M Program.

One of the most important features of MAHRA, sought by NAHT in our testimony before the Subcommittee in 1997, was the Congressional mandate for HUD to encourage tenant participation in the M2M Program and the provision of funds to help accomplish this goal. In response, HUD created the Outreach and Training Grant (OTAG) program to help tenants get involved in the program. Since 1999, NAHT has convened a monthly Mark-to-Market Task Force consisting of the area-wide tenant coalitions or organizing projects among NAHT's membership working in M2M buildings, including those which have received OTAG Grants from HUD.

The comments we submit today reflect the consensus views of these NAHT affiliated groups, based on their extensive experience with the implementation of the M2M Program "on the ground" in more than 20 States, including those such as Ohio, Pennsylvania, Illinois, Florida and New York with a large number of M2M-eligible buildings.

Summary Comments on M2M Implementation

There appears to be an emerging consensus that although the M2M Program was slow in getting off the ground, owner participation and OMHAR performance have finally reached a reasonable stride within the past year. Nonetheless, some observations are in order based on the experience of NAHT affiliates in the field which should be taken into account in future action by Congress.

Many owners have avoided M2M. First, many owners with high project-based Section 8 contract rents have avoided going into full M2M restructuring than was hoped by Congress or HUD when the program was crafted in 1997. In high market areas such as Boston, Manhattan or the West Coast, owners with Section 8 contract rents well above 120 percent of the FMR, which were originally thought to be prime candidates for M2M, have found they could achieve higher rent yields by switching over to HUD's Mark UP to Market initiative—actually increasing HUD's Section 8 outlays—or opting-out of the Section 8 program entirely. Tenants, HUD and elected officials have universally supported Marking Up these contracts as a preferred alternative to opt-outs, which both lose precious affordable housing units and initially cost HUD more through mandatory Enhanced Vouchers at full market rent levels.

In many more markets, owners thought to be eligible for M2M restructuring have opted instead for HUD's OMHAR Lites alternative—a much higher proportion than anticipated by OMHAR at the start of the program. These owners are willing to absorb a marginal cut in Section 8 subsidies to estimated "market" levels typically in exchange for a 1 year contract extension, in effect keeping their options open in the event future market conditions make opt-outs or Mark UP to Market a viable alternative. The fact that many owners have easily made the OMHAR Lite market adjustment suggests that many project-based Section 8 contracts may well have been inflated beyond actual costs by years of generous Annual Adjustment Factor (AAF) increases before MAHRA. These OMHAR Lite renewals leave both the tenants and the housing stock at continued risk of future opt-out decisions by owners.

So it appears that fewer owners than anticipated have chosen the full M2M restructuring path. Generally, buildings going into M2M are located in relatively depressed market areas with few prospects for an economic upturn in the foreseeable future. For these buildings, however, concentrated in "Rust Belt" States where real estate markets have generally lagged behind, M2M restructuring can be a viable option.

But on the whole, the economic "boom" of the past several years has meant high and rising rental market conditions for many owners, and a corresponding reduction in the number of owners for whom M2M is an attractive option. It has also meant that owners in "healthier" market areas are collectively in a stronger position to demand—and get—ever higher Section 8 contract renewals, with few "strings" attached such as repair requirements or long-term affordability agreements, from HUD and local agencies alike as the alternative to opting-out.

Similarly, while MAHRA contemplated transfers of M2M eligible buildings to nonprofit groups and provided for "disqualified" properties to be sold to nonprofits, in practice this has occurred very rarely. The specter of owner opt-outs has dampened efforts to transfer properties in any market area which can sustain rents; many

owners facing disqualification can simply walk away from M2M and opt-out, defusing enforcement efforts. OMHAR has responded with a detailed and thoughtful series of policy initiatives to promote transfers to nonprofit buyers, within the limits provided by the statute; to date, however, there have been few takers. NAHT and its affiliates, as well as OMHAR Director Ira Peppercorn, have identified the lack of a capital grant funding source for Preservation, which helped encourage such transfers under the now-defunct Title VI Preservation Program, as one of the reasons for the paucity of nonprofit purchase offers under M2M.

Fundamental to the lack of owner participation in M2M, however, was the decision by Congress to make owner participation in M2M entirely voluntary. Unlike the Title VI Preservation Program, which required owners to participate in a regulatory framework which preserved affordable housing while guaranteeing owners full market value, MAHRA allowed owners to decide whether to participate in M2M or "opt-out" of Section 8 completely. As amended in 1999, owners can now also participate in Mark UP to Market, but participation is still voluntary.

As long as Congress is unwilling to require owner participation in Section 8 renewals and/or regulate rents for assisted housing, owners will continue to opt-out of the program and/or negotiate ever higher levels of Section 8 renewals from HUD, with few repairs, as the price of staying in the program. And fewer owners will choose to restructure under M2M. The result will be continued erosion of the affordable housing stock and missed opportunities for savings in the Section 8 program.

"Devolution" of decisions to PAE's has slowed program implementation and added to complexity and costs. Another reason for the late start of the M2M Program appears to be administrative. The Congressional choice to "devolve" administration to State or private "Participating Administrative Entities" (PAE's) added a hugely complicated layer to the program. It took a long time for OMHAR to negotiate complicated administrative and fee agreements with an ever-shifting cast of PAE's to implement the program. Data from HUD's recent extension of the "devolution" concept to Section 8 Contract Administration suggests that "contracting out" HUD functions to State or private entities adds additional costs, as well as delays, to delegated programs.

Interestingly, as OMHAR has attempted to implement the PAE's mandate, OMHAR has been compelled to transform its approach once the M2M Program hit the ground. For example, it turned out that many of the public agency PAE's which Congress assumed would carry out the program in fact were not that interested. As a result, OMHAR has found itself dealing with fewer public agency PAE's in the past 2 years and has ended up delegating to a small number of "private" PAE's handling a large number of States each. Because of complaints from the field by tenants and others about the performance of many private PAE's, OMHAR has also increased its oversight over these agencies. So although Congress intended M2M to be administered by State and private entities, "real world" conditions have required a "recentralization" of the program back to HUD, with a small number of PAE's operating across State lines.

Another trend has been OMHAR's creation of its "Large Owner Initiative," whereby OMHAR Headquarters handles a large number of transactions for large national owners such as AIMCO, in recognition of the fact that ownership of HUD housing is increasingly concentrated among a small number of national and regional firms. Perhaps half of the HUD Section 8 stock is owned by fewer than 20 ownership entities; these owners found it inconvenient and costly to deal with a myriad set of local agencies and themselves have preferred to deal with one central administrator: HUD.

NAHT believes that these evolutionary trends in administration of M2M point both to legislative adjustments in M2M, as well as provide lessons applicable to other initiatives, such as Contract Administration of Section 8 by State Housing Finance Agencies.

Jury still out on final results of restructuring. Because of program delays, few M2M Restructuring Plans have reached the "closing" stage. As a result, NAHT and its affiliates have few cases to report where organized tenant groups have participated and been heard in the final MRRAS Plan which accompanies restructuring. Accordingly, we offer no evaluation or comments on how effective M2M has been from the point of view of substantive repairs and management improvements sought by residents.

One area worth noting, however, where Congressional and tenant concerns may have been satisfied to date is in the apparently minimal extent of "voucherization" of family developments in the M2M restructuring process. Reflecting a compromise between Congress and the Clinton Administration, MAHRA allowed PAE's to "voucherize" family developments in high vacancy rate areas as part of a final restructuring plan, provided several determinations were made by the PAE. (The

Clinton Administration attempted to negotiate a broader mandate for voucherization; the Senate, backed by NAHT and other constituency groups, advocated for maximal renewal of project-based subsidies.)

To date, NAHT is aware of only one instance of "voucherization" in the country under the full restructuring program, although 13 OMHAR Lite properties have been "voucherized." However, OMHAR's summary reports of the M2M pipeline do not indicate which, if any, properties have been converted to vouchers, or how many voucher conversions are under consideration by PAE's. Hopefully, most PAE's have concluded that project-based renewals are either mandated or warranted in the buildings they have reviewed up to the draft MRRAS Plan stage. While Congressional design of MAHRA appears to have avoided large-scale voucherization, it would be advisable for Congress to use this opportunity to reaffirm and strengthen HUD and OMHAR's mandate to maximally preserve M2M buildings with project-based Section 8 assistance wherever possible.

Progress has been made toward tenant participation, but more can be done. MAHRA mandated HUD to provide for tenant participation in the program. NAHT and its affiliates were active advocates throughout the M2M rulemaking process to ensure that this goal was reflected in M2M Program regulations.

OMHAR deserves much credit for establishing a formal tenant participation process in the final M2M regulations including two required meetings with residents in M2M properties; for mandating that tenants and their associations be granted third-party beneficiary status in the Use Agreements accompanying MRRAS Plans in restructured properties; for publishing an Operating Procedures Guide which guarantees residents' right to participate in the program; and, despite some delays, for designing and funding a workable system of technical assistance programs (OTAG's, ITAG's, and VISTA Volunteers). OMHAR's administration of the $10 million annual set-aside for technical assistance provided in Section 514 of MAHRA has resulted in an OTAG-funded support structure for tenant participation in about 30 States, including most of those with large M2M portfolios. OMHAR has been effective in selecting appropriate local partners to carry out tenant technical assistance work in the field—itself no small achievement. As the M2M Program reaches its full stride, this technical assistance infrastructure is well-positioned to serve the tenants affected by M2M in most of the country.

OMHAR has also been responsive to complaints from NAHT affiliates and OTAG grantees in the field that PAE's—particularly the private PAE's—were failing to meet OMHAR's requirements for tenant participation. In July 2000, NAHT's M2M Task Force collected complaints from OTAG's across the country regarding private PAE's failure to follow tenant participation requirements, such as notice to residents for required tenant meetings. The problem grew in magnitude as a small number of private PAE's took increasing numbers of States in their service areas. Following a teleconference call with OMHAR Director Ira Peppercorn in April 2001, which detailed these problems, OMHAR has been able to secure a marked improvement in the performance of several of the private PAE's. OMHAR has also responded to NAHT's suggestion for a face-to-face conference among OTAG's and PAE's to work out tenant participation protocols in greater detail.

Still, more can be done. The 10 day comment period on MRRAS Plans provided by OMHAR is not enough; at least 30 days is needed for tenants and their advisers to comment meaningfully. Requirements to provide notice and mandatory meetings with tenants should be extended to OMHAR Lite buildings and to decisions to "disqualify" an owner or otherwise to change the status of a property. OMHAR policies still deny access to tenants to basic information about the project's operating budget, essential information to help tenants comment meaningfully on the property's management plan. And there remain major gaps in HUD enforcement of the Congressional mandate to provide One Year Notice to Tenants when owners decide to opt-out of Section 8—originally required in MAHRA—and to enforce the owners' Duty to Accept Enhanced Vouchers when owners opt-out. Recommendations to improve these and other aspects of tenant participation are provided below.

Recommendations for Legislative Improvements to the M2M Program

Based on discussion of NAHT's M2M Task Force and input from NAHT affiliates and OTAG providers across the Nation, we recommend the following action by Congress to extend and improve the M2M Program this year.

(1) *Extend M2M restructuring authority.* NAHT joins the emerging consensus that the authority to restructure mortgages to save costs, as outlined in MAHRA, should be extended indefinitely.

(2) *Continue OMHAR as a separate office, reporting to the Secretary.* After a slow start, OMHAR is now functioning smoothly and generating results at a steady pace for the Department, given the limitations of the program designed by Congress and

the reluctance of owners to voluntarily participate in a "boom" real estate market. To throw sand in the machinery at this time, or spark inevitable personnel upheavals and administrative confusion that would ensue by a radical restructuring of the program would be both unnecessary and unwise. *OMHAR is not broke; we do not need to "fix" it.*

NAHT's M2M Task Force wrestled with the question of whether OMHAR should be folded back into the Office of Housing. Generally, NAHT has favored rebuilding, not dismantling, HUD's Office of MultiFamily Housing over the years. We have generally been opposed to the "devolution" of HUD functions to the States, and to the deregulation and voucherization of HUD housing stock which some have linked to the devolution strategy. Likewise, we are generally opposed to "contracting out" HUD functions such as contract renewal decisions for Section 8—a process strikingly similar, and perhaps modeled on, the delegation of M2M decisionmaking to PAE's.

Just last week, NAHT testified before the Commercial Activities Panel created by Congress and opposed the $196 million cost of Section 8 Contract Administration (C/A) to State Housing Finance Agencies. Instead, we pointed out that for a little over half of this amount, HUD could hire 1,000 new MultiFamily Housing Staff—double current staffing levels—for $115 million, more than enough to do the same work in-house.

At the same time, we must recognize that the Office of Housing has been seriously understaffed for many years. The forced retirements, layoffs and "reinvention" of the past few years have decimated the HUD Headquarters MultiFamily Staff and Field Offices alike. Many of the Department's most experienced personnel, and most of its "institutional memory" in the MultiFamily Housing field, are gone from the Agency. To compound this problem, most of the remaining HUD bureaucracy is eligible for retirement in the next 2 years.

So while rebuilding HUD's Office of MultiFamily Housing (OMFH) is a desirable goal, we must recognize it cannot happen overnight. Accordingly, we recommend that Congress begin the long-term project of rebuilding HUD by phasing out the C/A system and folding these functions back into the OMFH; repealing the $196 million line outlay expense for Contract Administration; adding $115 million to HUD's Salaries and Expense Account; and targeting these funds to hire and train new 1,000 MultiFamily Staff over the next few years. (Actually, up to 1,750 *new* staff will have to be hired and trained, including replacements for existing staff who may retire.)

In the meantime, and until this happens, it would be irresponsible to turn over administration of the M2M Program now to OMFH until it is restaffed and trained to handle the job. We fully support moving in this direction, and beginning this process now. But given the magnitude of the personnel challenge and pending upheavals facing OMFH, *Congress should leave the successful M2M Program in the separate office where it is located now, reporting to the Secretary, for at least the next few years.*

(3) *Redefine OMHAR's governmental mission and transform PAE's into subcontractors for HUD.* The lessons of the PAE's experiment in M2M underscore NAHT's conclusion that devolution of HUD functions to State and private entities is a bad idea. Besides being inherently more costly, from the tenants' point of view contracting out is also undesirable because it adds to the administrative complexity and confusion of having to deal with several agencies rather than one. Moreover, NAHT's experience with the private PAE's in particular suggests it is difficult to educate the private sector on the value and role of tenant and "customer" participation in decisions which affect them.

As noted above, the implementation of M2M has been evolving in a direction of greater administrative oversight by OMHAR of a shrinking number of PAE's, who have been acting more and more as subcontractors to OMHAR rather than independent entities acting in OMHAR's stead. NAHT believes that Congress should recognize and further promote this evolution in legislation this year. Specifically, *we recommend that Congress define the minimum governmental functions of the M2M Program—preparation and approval of the final MRRAS Plan and review of public and tenant comments at different stages of the process—and relegate them to OMHAR.*

Congress should also specify that PAE's—especially private PAE's—should not be delegated these fundamentally governmental functions. OMHAR may choose, and should be allowed, to subcontract out specific functions ancillary to preparing the Plan—such as preparation of a Capital Needs Assessment, appraisal, underwriting or environmental testing—to outside contractors, in cases where in-house staff cannot perform them. These outside contractors may be private PAE's or others. But

the essential governmental function—decisions regarding the MRRAS Plan and subsidy commitments which go with it—should not be "privatized."

(4) *Encourage tenant participation.* NAHT offers several recommendations to further improve tenant participation in the M2M process.

(a) *Improve access to information.* Congress should mandate that HUD release the Operating Statement of Profit and Loss (formerly Form 92410) to tenant groups which request it, as part of their review of operating expenses and preparation of a Management Plan under the M2M process (or other processes under MAHRA). As residents of the properties, tenants have the greatest stake in knowing how their rent money—and subsidy dollars—are being spent. Residents also know a great deal about what is going on in their building, and can help act as HUD's "Eyes and Ears" to ensure that funds are spent properly. Similarly, Congress should mandate release of the balances in Reserve for Replacement Accounts for M2M properties. With access to these documents, residents can help identify scams, waste, and double-dipping, can help OMHAR and PAE's more accurately assess repair and operating needs, and can help identify potential nonprofit transfer opportunities. Congress should likewise mandate that HUD release the *prospective* operating budget of M2M properties prepared under the MRRAS plan. Although OMHAR has promised the release of this document, few PAE's have in fact done so, even when requested by local tenant groups.

OMHAR has acknowledged that there is no legal barrier to releasing these data under the Freedom of Information Act, despite earlier claims to this effect. Instead, OMHAR has declined to restore HUD's earlier policy releasing this document due to a fear of owner opposition. But honest owners should not fear release of this information to residents, if they have nothing to hide. Congressional intervention is needed to ensure release of this document to residents.

Similarly, Congress should mandate the release of HUD's Previous Participation Form 2530—redacted to remove Social Security or EIN numbers—to resident groups upon request, so that tenants learn what other properties are owned or managed by the principals who control their building. With this information, tenants can research or contact tenants in other buildings to explore common issues or problems.

(b) *Extend the $10 million set-aside for technical assistance funding.* Section 514 of MAHRA, which authorizes HUD to provide up to $10 million annually from the $14 billion Section 8 Certificate Fund for technical assistance to tenants in expiring Section 8 buildings (NOT just those eligible for M2M) "sunsets" on September 30, 2001. As mentioned above, OMHAR has done a good job in designing programs to make good use of these funds. However, existing programs remain underfunded. Extending this authority will provide sufficient funds to continue existing commitments and meet reasonable demand for funds in the future.

At the same time, Congress should fix an unusual, unintended glitch in the wording of Section 514 which has been interpreted by HUD's Office of General Counsel to prohibit its "rollover" of unexpended annual balances into the next fiscal year, as is the case with most HUD programs. As a result, OMHAR discovered that funds authorized by Congress in prior fiscal years which had not been "obligated" during that fiscal year were "lost" at the end of that year, and were thus not available to meet program commitments. Of the $40 million authorized by Congress from fiscal year 1997 through fiscal year 2001, only about $12 million has been actually obligated financially to HUD grant programs to date—another $8 million is in the pipeline. The rest—some $20 million—has reverted to the Certificate Fund and may no longer be available. In extending Section 514, we recommend that this glitch be fixed to allow the rollover of unobligated funds to successive fiscal years.

We also recommend that Congress clarify that Section 514 funds can be used to assist tenants in Section 202 and 515 buildings, and buildings receiving Enhanced Vouchers—for example, Section 8 opt-out and/or mortgage prepayment buildings—and other voucher conversions from project-based Section—for example, HUD Property Disposition/foreclosure buildings—from the Certificate Fund as well. NAHT affiliates have reported requests from tenants in these buildings for assistance, but are unable to use OTAG or ITAG funds to assist them under current eligibility definitions.

(c) *Extend time for review of the MRRAS Plan.* We recommend that the required time for review be extended from the current 10 to 30 days for tenant review and comments, on the draft MRRAS Plan.

(d) *Require written response to tenant comments.* We recommend that OMHAR and/or the PAE reviewing tenant comments respond, in writing, to these comments, stating reasons for concurrence or nonconcurrence, as is required in Federal Environmental Reviews.

(e) *Require notice to tenants and a required meeting throughout the M2M process.* Most important, tenant notice and at least one mandatory meeting should be re-

quired of all OMHAR Lite projects. The unexpectedly high volume of OMHAR Lites dramatically underscores the need for a guaranteed tenant role in this process. In particular, tenants have a stake in ensuring that reductions in project income in a Lite building do not adversely affect project operations, repairs or reserves.

Similarly, notice to tenants and a guaranteed meeting should be required at the end of the M2M process if a property is being disqualified or kicked out of the program, or if an owner changes its decision and changes to OMHAR Lites, Mark Up to Market, or opts-out of the program—any change in property status. Tenants should also be notified if the PAE handling their property changes in mid-stream.

(f) *Enforce Notice and Duty to Accept requirements when owners opt-out and fix problems with Enhanced Vouchers.* When owners opt-out, HUD should affirmatively enforce its own standards. While this should be obvious, unfortunately HUD has stated publicly and in writing that it does not intend to enforce an owner's duty to accept Enhanced Vouchers in the event of an opt-out, even though HUD's Section 8 Guide clearly states that owners are so obligated. Likewise, HUD has not always required owners to adhere to the One Year Notice of Opt-Out to tenants. Congress should clearly mandate HUD to enforce its own standards.

Congress should use the opportunity when it extends M2M to further amend those sections of MAHRA that provide Enhanced Vouchers in the event of opt-outs. Briefly, problems requiring a legislative fix this year, where HUD does not believe it has a mandate, include eliminating PHA rescreening of tenants when they switch to Enhanced Vouchers, and allowing "empty nester" Section 236 tenants to keep an overhoused apartment, provided they pay "market" or FMR rent.

(5) *Support the Preservation Matching Grant bill to provide a capital grant source to promote nonprofit transfers and preservation of M2M buildings.* As indicated above, OMHAR's restructuring "toolbox" does not today include a Capital Grant source to help potential nonprofit purchasers assemble the resources to buy and preserve buildings undergoing the M2M process. For properties needing repairs, a Capital Grant source would be a useful tool to help an owner fix a substandard building as part of a MRRAS Plan.

At a recent forum convened by the Government Accounting Office, OMHAR Director Ira Peppercorn concurred with NAHT and other participants that passage of a Capital Grant program by Congress would be a welcome additional tool to help OMHAR in its preservation mission. Fortunately, prospects have improved for passage of the Preservation Matching Grant bill which passed the House in the last session but did not get out of this Subcommittee in the Senate. With strong bipartisan support in both Houses, we are hopeful that the Preservation Matching Grant will pass in this session. The bill has been refiled in the House as H.R. 425, and is soon to be refiled in the Senate by Senator Jeffords and others. We strongly urge the Subcommittee to hold an early hearing to give this bill renewed momentum when it is refiled.

(6) *Adopt Regulatory Program to Preserve Affordable Housing.* In extending the M2M Program, NAHT believes that Congress should establish a national regulatory framework to limit owners' ability to opt-out, prepay, and obtain windfall profits through high market rents at the expense of residents and the Nation's investment in affordable housing. It would be far preferable and less costly to preserve at-risk units by regulating owner "choice" to opt-out of HUD programs.

Congress has the authority to extend regulation or to require owners to seek and accept Congressional offers of additional Section 8 subsidies in order to achieve the overriding public purposes of preventing tenant displacement and preserving housing at the least cost to the Government. For example, restoring the regulatory framework of the Title VI Preservation Program and extending its concepts to expiring Section 8 contracts would preserve more units and would be cheaper in the long run than replacing lost units with new construction. NAHT would prefer this approach.

Creation of a regulatory framework would result in a dramatic upsurge of owners seeking full M2M restructuring at lower Section 8 rent levels, fewer OMHAR Lites and "opt-outs," and greatly increased cost savings in the Federal Section 8 Certificate Fund as a result. It would also greatly increase OMHAR's leverage in negotiating higher repair and operating standards and longer-term affordability in exchange for the financial benefits of restructuring than is the case in an unregulated environment where owners can walk away from the process at any time. It would also result in a dramatic increase in owners willing to sell to nonprofit organizations.

In the meantime, at the Federal level, both Congress and the Administration have now acknowledged the need to provide funds as incentives to persuade owners voluntarily to remain in HUD's subsidy programs. As the experience under MAHRA shows, these solutions will be more expensive in the absence of a Federal regulatory

framework, and many units will still be lost. However, voluntary financial incentives remain less expensive than the cost of doing nothing, which would leave society a huge unpaid bill for new replacement housing and fuel the hidden costs of homelessness and despair. So Congress should extend the M2M Program, supplemented by Preservation Matching Grants, even in the absence of a regulatory framework to preserve housing at the least cost to the Government.

(7) *Reaffirm and strengthen HUD and OMHAR's mandate to preserve M2M buildings with project-based Section 8 assistance.* As indicated above, while the current program design appears to have resulted in a minimal number of voucher conversions, the relatively small number of completed "closings"—129 out of 904 properties accepted for M2M assignment as of June 11, 2001—suggests that caution on this point may be warranted before concluding that massive voucherization has been avoided. Congress should use this opportunity to clarify its intent to preserve the maximum amount of the M2M-eligible stock with project-based Section 8 assistance.

Mr. Chairman, thank you for the opportunity to provide testimony to the Subcommittee today. NAHT stands ready to work with the Subcommittee and with OMHAR to make the M2M Program work better for tenants and our communities.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR ALLARD FROM JOHN C. WEICHER

Q.1. What is going to happen to the properties that require full mortgage restructuring but only received rent reductions? What can HUD do to ensure their physical and financial health? Would it be accurate to say that some of those owners are receiving Government subsidies but neglecting to keep up their properties? And, if so, what actions has HUD taken against these owners?

A.1. There are approximately 200 properties that are identified as requiring full mortgage restructuring but that only received rent reductions. These properties have been placed on a "watch list" and will be closely monitored by our field offices to assure that the owners meet their responsibilities for property maintenance and financial soundness.

Through HUD's Real Estate Assessment Center, these properties will be inspected and analyzed for any trend to deterioration or financial compliance issues. We fully intend to protect tenants in these properties from living in housing that is less than fully acceptable and will take appropriate servicing measures against any owners who do not maintain their properties, including referral to the Departmental Enforcement Center.

Q.2. The same Act that established the Mark-to-Market Program gave HUD the authority to issue grants for the capital costs of rehabilitation to owners of eligible mark-to-market properties. The grants are to be funded with money recaptured from contracts for interest reduction payments. Though HUD has not yet exercised this authority, HUD's 2001 and 2002 budgets contain fund balances from these recaptured payments.

How much money is available from recaptured interest reduction payments for rehabilitation grants? How has this money been used since the enactment of MAHRA? What are HUD's plans for this money? Does HUD plan to exercise its authority to issue rehabilitation grants?

A.2. To date, OMHAR had $22,521,724 in available interest reduction payments (IRP's) from properties going through its debt restructuring process, and has used its authority under MAHRA to apply the funds as follows:

- $19,570,724 was used to fund the Reserve-for-Replacement accounts of the properties from which the IRP was "recaptured."
- $1,954,000 was used to subsidize the debt service on the property.
- The remaining $997,000 was actually recaptured and returned to HUD.

For the rest of the Department, the fiscal year 2002 budget proposes to amend the multifamily rehabilitation program authority under Section 236(s) by repealing provisions which were designed to offer loans to owners to rehabilitate multifamily projects due to the outlay costs of implementing this authority.

HUD currently has the authority to provide grants under Section 236(s) to owners for these purposes, although that authority has yet to be implemented for several reasons. First, the authority deals with highly complex financial issues. Second, it had been

HUD's intention under the previous Administration to implement the grant authority simultaneous with the implementation of the loan authority, which was not enacted until more recently. As a result, implementation of the grant authority has not yet taken place.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM JOHN C. WEICHER

Q.1. One concern that I have heard voiced is that a number of properties with above-market rents are not being referred by FHA to OMHAR. Do the panelists agree with that assessment? If so, what is the best way of addressing that problem? For example, should OMHAR be given the function of doing the initial reviews of rents?

A.1. There have been instances of properties with above-market rents not being referred to OMHAR. Where this has happened we in FHA have worked with the offices to review the reasons why.

We often found that rents that appeared to be above-market were actually at the market when reviewed under our rent comparability requirements. Many of the markets have substantially strengthened in recent months, so that rents in those markets have risen to the level of the project rents.

There are also properties where the rents in the immediate neighborhood are different than the rents for the Zip Code as a whole. The model used for initially determining whether a property was above market used Zip Code information. And, property rents vary by property condition.

Some types of properties may not have been referred because the initial guidance was unclear. For instance, the initial guidance on Section 8 renewals for FHA insured, State bond financed properties initially seemed to exempt such properties (this has been corrected in subsequent guidance).

There are other reasons why a property may not be referred to OMHAR. We recently surveyed the field on a sample of 13 properties that OMHAR reviewed for rent comparability and had contract rents above market. All except one was not sent to OMHAR for debt restructuring for legitimate reasons unrelated to rent levels; these reasons ranged from owner ineligibility to prepayment. The one exception was based on a miscommunication where the local office thought they had sent it for restructuring; OMHAR had treated as only a request for rent comparability. (This property has been subsequently returned to OMHAR for restructuring.)

We are reviewing all of the properties with Section 8 renewals since October 1, 2000, that OMHAR's model indicates should have been submitted to them for rent or debt restructuring. Any properties with contract rents still above market will be identified for special review and, if necessary, steps taken to bring the rents in line at the earliest opportunity.

Looking ahead, I think it is now clear to all of our owners that Congress fully intends to continue the requirement to bring properties to market rent if they are going to continue to receive Section 8 subsidies. At the same time, OMHAR has improved its track record for processing its deals and holding its PAE's accountable for timely processing. Both factors should result in all eligible properties receiving the assistance they need through OMHAR.

OMHAR is already able to provide rent comparability studies and analysis where needed. We believe, for the reasons cited above, that the process would continue to work and to improve, without additional Congressional requirements.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM PETER GUERRERO

Q.1. Some participants in the program have complained that OMHAR's operating procedures guide is far too detailed and prescriptive, and the controls it has put in place are too onerous and time consuming. Do you agree? Does the guide give the PAE's enough flexibility to deal with the specifics of individual deals?

A.1. Of the 15 participating administrative entities we contacted, including 10 public and 5 nonpublic entities, 7 believed the extensive requirements contained in the operating procedures guide has been a hindrance to completing the restructurings in a timely manner. For example, one public participating administrative entity told us the guide is tedious and time consuming to follow and becomes a source of frustration when the entity is trying to solve problems by thinking creatively. However, the Participating Administrative Entities provided few specific examples of overly prescriptive requirements that contributed to delays. As a result of concerns with the operating procedures guide, OMHAR streamlined its requirements and reissued the guide in January 2001. OMHAR believes the revised guide makes clear its reliance on good judgment and quality restructuring by the Participating Administrative Entity and notes OMHAR's willingness to consider alternative approaches that reach the goals of the program. OMHAR said the emphasis throughout the revised guide is toward flexibility in reaching common sense conclusions and logical restructuring outcomes.

The remaining eight Participating Administrative Entities we contacted said the operating procedures guide was necessary to ensure consistency in the program and did not impede their ability to complete the restructuring transactions in a timely manner. Furthermore, most program stakeholders participating on our expert panel believed the guide somewhat or greatly *accelerated* the processing of restructuring transactions. While we did not conduct a thorough examination of all the requirements contained in the operating procedures guide, we tend to agree with the majority of Participating Administrative Entities who believe the guide was necessary to ensure consistency in the program. While the guide contains specific requirements that Participating Administrative Entities must follow in reaching decisions on various restructuring issues affecting a property and how those decisions are to be documented, it allows the entities to reach decisions based on the property's specific circumstances. Accordingly, we believe that it gives Participating Administrative Entities sufficient flexibility to deal with the specifies of individual restructuring transactions.

Q.2. Do the guidelines ensure consistent results across State lines? In your view, is this a desirable goal?

A.2. The operating procedures guide outlines a uniform process for all Participating Administrative Entities to follow in completing a restructuring transaction, the guide helps to ensure consistent re-

sults across State lines, which we believe is a desirable goal. The law requires OMHAR to assign properties for restructuring to the Participating Administrative Entities based on the entities' geographic jurisdictions. Consequently, Section 8 property owners with properties in several States may be dealing with several different entities. Without a national mark-to-market protocol to ensure consistency, there is increased likelihood that such owners would become frustrated trying to negotiate transactions with the different Participating Administrative Entities, which may be following different restructuring processes.

Q.3. Has the increased involvement of HUD in the operations and staffing of OMHAR in the past several months had any impact on OMHAR's ability to do its work?

A.3. According to OMHAR, the Office has been unable to obtain new staff due to the current hiring freeze by HUD, despite the fact that OMHAR is exempt from this policy. OMHAR also noted that HUD has not allowed internal promotions due to budget constraints. OMHAR stated that they need to fill vacated positions and promote staff in order to maintain the progress made in restructuring Section 8 properties. OMHAR noted that the law gives them the statutory authority to hire and promote staff as needed. Section 574(a) of the law states that the Director of OMHAR can appoint and determine the compensation of employees that is necessary to carry out the functions of the Office. According to HUD, restrictions on hiring and promotions were the result of OMHAR's scheduled termination on September 30, 2001. HUD stated that hiring and promoting staff did not make sense with OMHAR scheduled to terminate. HUD did say that the restrictions would be lifted if OMHAR's authority is extended.

Q.4. As you know, the law gave State and local housing finance agencies a priority in becoming restructuring agents for HUD, or PAE's. While there are more public PAE's, the private PAE's are doing more of the work. This is particularly true for the more complex full restructurings. Why is this the case? How have public and private PAE's performed to date? To what do you attribute any differences in performance? For example, did OMHAR simply not give public PAE's assets, or did public PAE's get assets later than private PAE's? In addition, Barbara Thompson testified that, on a percentage basis, public PAE's did as well as private PAE's in terms of speed. Is this true?

A.4. Of the 138 full mortgage restructurings completed by June 15, 2001, nonpublic Participating Administrative Entities completed 106 (77 percent) and the public entities completed the remaining 32 (23 percent). On average, the nonpublic Participating Administrative Entities took less time to complete the full mortgage restructurings once they accepted the property from OMHAR for restructuring—about 395 days compared with an average of 475 days for the public entities. The nonpublic Participating Administrative Entities also completed more rent restructurings and required less time to complete the restructurings than the public entities. For example, of the 500 rent restructurings completed as of June 15, 2001, the nonpublics completed 278 (56 percent) and required about 180 days to finish the process compared with the

public entities that completed 219 (44 percent) and required an average of 221 days. According to OMHAR, public entities may be less willing to put pressure on the owners to cooperate in a timely manner, or may engage in more lengthy negotiations to get the best deal for the owner. While both of these actions cause delays in completing the transactions, OMHAR said public entities may feel compelled to do so since they have established long-term relationships with the property owners. OMHAR also noted that nonpublic Participating Administrative Entities seem to be more interested in earning the incentive payments for timely completion of the restructurings than the public entities. OMHAR believes this may be largely attributable to the fact that the nonpublic entities receive a significantly lower base fee than the public entities.

OMHAR has assigned more properties to the nonpublic Participating Administrative Entities for restructuring. For example, as of June 15, 2001, OMHAR had assigned 700 properties requiring full mortgage restructurings to nonpublic entities and 234 properties to public entities. For those properties requiring only rent restructuring, OMHAR assigned 345 to nonpublics and 243 to publics. According to OMHAR, nonpublic Participating Administrative Entities are assigned properties in States where there is no public Participating Administrative Entity presence, the public entity has been capped either by their own election or by OMHAR due to performance, or there is a "large-owner" memorandum of understanding involving multijurisdictional properties—used for those owners with a large number of Section 8 properties located in various States.

Q.5. In your view, do public PAE's have the staff to handle M2M work? Do private PAE's have enough staff?

A.5. While we did not specifically evaluate the Participating Administrative Entities' capacity to complete mark-to-market restructurings, we found that the nonpublic entities tended to have more staff dedicated to work on the program, although they also tended to have larger workloads. Additionally, OMHAR told us that the skills, expertise and seniority at both a staffing and organizational level were significantly lower for a number of the public Participating Administrative Entities, and that the capacity of some public entities has proven to be significantly less than indicated in their original proposals.

Q.6. The witness from the National Association of State Housing Agencies, Ms. Thompson, says in her testimony that OMHAR has created many impediments to State agencies participating in the Mark-to-Market Program. In your view, is this accurate? If so, how have the private PAE's been able to complete so many projects? Are there impediments unique to the public PAE's, or are there different requirements for the public vs. private PAE's?

A.6. We are not clear to which impediments Ms. Thompson is referring, although we are aware that her organization has not been pleased with the compensation that the public Participating Administrative Entities receive to complete the restructurings, the program's operating procedures guide, or some of the program's conflict of interest provisions. However, public Participating Administrative Entities receive higher compensation than the non-

publics and the restructuring process, including any conflict of interest provisions, outlined in the program's operating procedures guide applies to both public and nonpublic entities. According to OMHAR, there are no restructuring requirements that are unique to the public Participating Administrative Entities.

Q.7. The law authorized OMHAR to establish exception rents in certain circumstances. The Congress provided this authority to provide OMHAR with some flexibility. There were two specific circumstances that were considered: First, inner-city properties where local market rents were too low to support the operation of a project that was generally considered to be an anchor in an otherwise blighted community. The Congress clearly expected OMHAR to provide rents to continue to maintain such properties. Second, the Congress felt that exception rents would be needed in rural areas. Has OMHAR been exercising this authority? In what cases?

A.7. Section 514g(2) of the law states that exception rents are to be allowed if a Participating Administrative Entity determines that the housing needs of the tenants and the community cannot be adequately addressed through implementation of the rent limitation required through a mortgage restructuring. The law allows Participating Administrative Entities to provide exception rents that do not exceed 120 percent of Fair Market Rents for up to 20 percent of the expiring Section 8 contract units in a fiscal year. The law also allows OMHAR to grant waivers for rents that exceed 120 percent of Fair Market Rents for up to 5 percent of all units restructured in any fiscal year. While OMHAR said they did not have an identifier to determine whether the exception rent properties were located in inner cities or rural areas, they could provide the number of properties receiving exception rents to date. Accordingly, 36 properties have received exception rents as of July 2, 2001.

OMHAR noted that several reasons exist for properties receiving exception rents, including: (1) when market rents will not support the property's expenses, such as in cases where rents are stable and expenses are increasing as may frequently occur in rural areas or in areas marked by generally poorer economics, low growth, or even population decline; (2) when the housing should be retained since acceptable, affordable options are not available which is often the case in rural areas where the mark-to-market property may be the only rental housing; (3) when older properties that are characterized by increasing expenses for repair and maintenance and the need to increase deposits to the replacement reserves—effectively an expense—for the future have higher expenses than other properties; and (4) when properties have higher expenses than market rate properties because of the additional administrative burdens of Section 8—that is, the need for additional security and/or maintenance in stressed areas.

Q.8. One clear reason for giving State housing finance agencies a priority in the law was that the Congress felt that public agencies would be more aggressive about enforcing the mission of maintaining affordable housing in strong physical and financial condition for the full term of the 30 year affordability commitment. From discussion with program participants, has there been a difference in the performance of the public and private PAE's with regards to ade-

quate rehabilitation, adequate reserve for replacement for future capital needs, or other "mission"-related indicators keeping the long-term affordability in mind?

A.8. Since we did not include an examination of differences between public and nonpublic Participating Administrative Entity performance as part of our work, we are not in a position to judge whether there have been any meaningful differences between public and nonpublic entities' performance of mission-related activities, such as their actions to address property rehabilitation needs. In analyzing the dollar amounts of rehabilitation required for the 138 completed full mortgage restructurings—as of June 15, 2001—we found that, on average, public Participating Administrative Entities required more rehab funds than nonpublic entities. For example, for the restructurings completed by public entities an average of about $106,000 per property in rehabilitation was required, while the nonpublic entities required an average of about $53,000 per property in rehabilitation for the restructurings they completed. We also found that for 44 percent of the properties restructured by nonpublic entities, no rehabilitation was required, compared to 13 percent of the properties restructured by public entities.

Q.9. As a follow-up, is there some general and consistent standard of rehabilitation and replacement reserves that can be incorporated into the statute or the regulations that ensures that building will continue in good shape for the 30 years?

A.9. None of the members of our expert panel or other program stakeholders that we met with specifically suggested that there needs to be a revision of the legislative or regulatory standards regarding property rehabilitation. Requirements in the Mark-to-Market legislation and regulations and in OMHAR's operating procedures guide make it clear that properties are not only to receive necessary rehabilitation when the property goes through restructuring, but also that the property be maintained in decent, safe, and sanitary condition over the long term. For example, Section 401.558 of the regulations state that a restructuring plan must require the owner to maintain the project in a decent and safe condition and Section 401.560 of the regulations requires that each Participating Administrative Entity establish management standards that, among other things, require the project management to protect the physical integrity of the property over the long term through preventative maintenance, repair, or replacement. OMHAR's operating procedures guide specifies a number of steps that Participating Administrative Entities must follow in determining how to address property rehabilitation needs. Among other things, it states that Participating Administrative Entities are to determine the deposits to the replacement reserve that are needed to maintain the property in acceptable physical condition over the term of the mortgage.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR ALLARD FROM PETER GUERRERO

Q.1. In your opinion, how effective is the process for monitoring the physical and financial health of the properties that needed full restructurings but only received rent reductions?

A.1. As we noted in our testimony, while the Mark-to-Market Program has resulted in Section 8 savings, the requirement that rents be reduced to market has increased the risk of physical and financial problems for some properties. This includes 75 properties that, as of June 15, 2001, OMHAR had processed as rent restructurings, but which did not meet OMHAR's underwriting criteria and 78 properties that OMHAR had processed as full mortgage restructurings, but for which OMHAR reduced the properties' rents to market without restructuring the properties' mortgages. We found that while HUD's Office of Housing had developed guidance for its field offices to follow in monitoring the physical and financial condition of such properties, the guidance did not specifically cover the 78 properties processed as full mortgage restructurings. HUD has recently agreed to revise the guidance so that it will include all properties that may be at risk and to strengthen other provisions contained in the guidance. However, these revisions were not yet finalized as of July 2, 2001. While this is a positive step, it will be important for both HUD and the Congress to ensure that any problems that arise at these properties are quickly identified and corrected before they affect the property's value and impair the well being of property residents.

Q.2. What changes in resources, if any, will be required in extending the Mark-to-Market Program?

A.2. While we have not performed any analyses on the resources needed to administer the program, it seems likely that the workload for restructuring properties would continue to remain at current levels for the next 3 years. Therefore, it appears that OMHAR's resources would also need to remain at approximately their current levels for the same period. As we noted in our testimony, OMHAR estimated that over 1,300 Section 8 properties with above-market rents would expire after fiscal year 2002. Of those properties, over 1,150 (88 percent) will expire by the end of fiscal year 2004.

COALITION on **HOMELESSNESS**
and **HOUSING** in Ohio

June 27, 2001

The Honorable Jack Reed
320 Hart Senate Office Building
Washington DC 20510

Dear Senator Reed,

- The Coalition on Homelessness and Housing in Ohio (COHHIO) welcomes the opportunity to comment on the renewal of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). In particular we are anxious to have assurances that MAHRA provisions governing restructuring of HUD insured mortgages will be renewed and that Congress will continue support for Outreach and Technical Assistance grants so that tenants and local stakeholders can have a voice in the preservation of housing opportunities in their local communities.

Congress' enactment of the 1997 ''Multifamily Assisted Housing Reform and Affordability Act of 1997''(MAHRA) marked a new way of providing housing assistance in privately owned, HUD insured properties. In MAHRA, Congress determined that owners of HUD insured and subsidized properties should operate their properties in a way that is consistent with market rate housing. At the most superficial level this meant that the Treasury realized a savings on operating costs by reducing subsidy levels to "comparable market rates". But at another level, MAHRA required that the assisted housing stock become more "market conscious" For owners this market consciousness means bringing their properties to a market standard condition and becoming responsive to the needs of neighbors (stakeholders) and consumers (tenants)...just like any other residential property owner. For tenants and stakeholders market consciousness means having a voice in the condition and management of the property. While other commentators have focused on cost savings accomplishments of MAHRA, we'd like to focus on MAHRA's community development aspects: the potential for preservation of affordable housing resources, for improvements in housing quality and management performance, and for tenant and stakeholder involvement in the housing stock in their localities.

The Good News: Saving Housing Opportunities

MAHRA offers owners an opportunity for to preserve well managed and well maintained properties in high need areas. For example:

- In Mechanicsburg, Ohio—a rural community in the 7th Congressional district, the seniors living in the 50 units at Mechanicsburg Village in Champaign County will benefit from the owner's decision to restructure the mortgage and make a long term commitment to affordability.
- In Bowling Green Ohio, in House District 5, the owners of Fairview Manor, a mixed senior/disabled/family development of 92 units will use the Mark to Market program to preserve low income housing in the face of a growing demand for student housing in the area around Bowling Green State University.

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MAHRA can also offer a "second chance" for troubled properties in Ohio's urban where tenants and communities can come together around preservation plans.

- At Central Park Place and Regency Square in Cleveland (House District 11) will use Mark to Market to lower their operating expenses and renovate their physical environments to provide housing for another generation of low income families. The tenants' commitment to these housing units goes beyond the need for shelter and encompasses their ties of kinship and friendship that makes a community within a neighborhood.
- At Holden House in Dayton (House District 3) and at Parkway Towers in Cincinnati (House District 1) owners are hoping to use M2M provisions to preserve affordable housing in an old downtown hotels on the fringes of redeveloping central business districts where the lowest income seniors and disabled persons have created unique communities of persons who were one step from the homeless shelter.
- The Mt. Vernon Plaza properties in Columbus' 12th Congressional District a coalition effort by local HUD officials, a national housing preservation group, the City of Columbus, the State of Ohio and two well organized tenants organizations will use Mark to Market to facilitate a non-profit transfer that will preserve and improve 375 units of elderly and family housing on the near east side of the state capital.

The Good News: Encouraging local communities to address local affordable housing needs.

For a long time, Congress and HUD have sought to involve local officials in planning for affordable housing needs. The current requirement for Consolidated Plans is one example of that concern. Still, in many communities in Ohio, there is an attitude of: "THAT'S ***FEDERAL*** HOUSING". They don't see a need to inspect, enforce, or provide public services to the owners and the tenants. MAHRA brings local officials and community stakeholders back into the discussion. Local government and local service providers are invited to comment on maintenance, management and housing market issues in connection with specific "mark to market" buildings. In some cases, local resources can be invited to participate financially in preservation activities. In Ohio, this "opening" has encouraged local planning efforts which, for the first time, view the Federally supported housing stock as a local community asset.

- In Dayton, local planners have been challenged to address balancing the need for downtown redevelopment with the desire to deconcentrate low income people. Local government at the city and the county levels in Dayton and Montgomery counties have been active in Mark to Market planning in their communities.
- In Cincinnati, an epidemic of MAHRA induced owner "opt-outs" has stimulated local government to undertake a local study of the impact of HUD policies…and to use a portion of Enterprise Zone funds for outreach to tenants and local stakeholders in areas where there are concentrations of HUD insured and subsidized housing.
- In Cleveland and Columbus, the local HUD offices have convened and hosted monthly meetings of housing providers, local officials and housing advocates to share information on preservation activities in their localities. As noted above, properties in both cities are receiving local funding for preservation "deals."

The Good News: Opening communications with tenants.

The most profound impact of MAHRA's move to a "market consciousness" may

be the new role of tenants. Under MAHRA, tenants in HUD insured and subsidized properties shift from "service recipient" towards being a "customer". MAHRA's mandate for tenant involvement in proposed Mark to Market restructuring has brought forth a new constituency for housing preservation. With the support of Outreach and Technical Assistance Grantees (OTAGs) like COHHIO, tenants have been "expert witnesses" about the conditions where they live...and advocates for preservation and improvement. Our experience in Ohio is that, after the shock of being ASKED TO COMMENT wears off, tenants are assisting OMHAR and the PAEs in making plans for the long term viability of the properties. Tenant comments may be as simple as observing that when it rains, there's a flood in the parking lot. (How many times are the "official" inspectors on the premises in the rain?) Or they may be more complex analyses of how the property can address chronic vacancy and frequent turn over of units. The revelation about the role of tenants in HUD subsidized housing is that, for the most part, tenants see themselves as members of a community and see the property as their home. Once mobilized to comment, they have followed the process to completion and appear to be willing monitor compliance with the agreements that are created between owner and OMHAR through on-going tenants organizations.

Continuing concerns: Cost Savings

There is no denying that MAHRA has (and will when it's renewed) save taxpayer dollars. However some of the reported savings from OMHAR may be illusory. At COHHIO we are concerned about the "lite" restructure deals that will reduce operating expenses, but which have not addressed outstanding physical needs. We are concerned about owners who, for many reasons, were given unrealistically high comparable market rents—they will be coming in for renewal in 2-3 years and may need to be restructured at that point. We are also concerned about owners who have "dropped out" of the M2M process when faced with the costs of addressing the physical repair bill. Several properties in Ohio where there are significant physical condition issues have NOT restructured and have subsequently been taken to market rate and put on the HUD troubled properties list. These properties will most likely come into the HUD enforcement system where there are fewer opportunities for tenant and stakeholder participation in crafting preservation decisions. Finally, we are concerned about M2M deals where OMHAR has approved an inadequate program of repairs in exchange for owner cooperation. At many senior citizen properties in Ohio, PAEs have not included disability modifications or accessible units when disabled households are the most likely market for these units. Bad deals do not save money or housing. Finally, OMHAR seems not to take seriously the impact of bad property management in approving deals. Tenant comments about property management are routinely dismissed as irrelevant and suggestions that management standards be incorporated into restructuring plans are dismissed as unenforceable. Bad management will ruin the best deal.

Continuing concerns: OMHAR performance

As several other presenters have noted, OMHAR got off to a slow start but has, by trial and error, gathered itself up into a working operation. Early in the process, someone said: "we're building a jetliner in flight." Many of the problems with OMHAR are a result of that trial and error process of development. COHHIO is less concerned about the ultimate location of the program operations, than we are in addressing some continuing needs. A theme that runs through the following comments are the need for

consistency and predictability and the need for coordination among all the interested parties.

The need for consistency and predictability is important because it provides the sense to owners who have to "buy in" to the program...that the deal will not change over time. Sadly that has not been the case. In the process of "trial and erroring" that OMHAR went through during the past three years, the deals have changed substantially...and the owners who "held out" for a better deal have gotten better deals. Similarly, there is a lack of consistency among PAEs in what they are willing/able to build into a deal. This has resulted in an owner getting different deals from different PAEs. Part of the problem has been the constant revision of the Operating Procedures Guide (OPG) which has resulted in over prescription and under enforcement. PAEs have complained about the over-proscriptive nature of the OPG. Our concern is that, while the OPG may be overly proscriptive, its procedures are under enforced. PAEs and OMHAR itself have not been scrupulous about following procedures designed to protect and enhance tenant involvement. One OMHAR consultant told COHHIO that it was OK not to have a "first" meeting with tenants (as required by the OPG) because they were going to have a "really good second meeting."

Coordination of effort has been a challenge for OMHAR. The restructuring process embodied in MAHRA created an "arm's length" operation that insulated the restructuring decision makers from the departments that had been most immediately involved with the properties in question. Therefore OMHAR had a quasi Independent identity (reporting to Congress and the Secretary) and the local HUD jurisdictions (Hubs and Program Centers) were obliged to relinquish control of the properties when they were referred to OMHAR. THERE IS MUCH THAT IS VALUABLE about this arm's length strategy...but one of the unintended consequences has been that often key parties are often left out of the discussion. MAHRA and OMHAR put the obligation of coordinating the Mark to Market process on the PAE. WE THINK THAT IS A BIG MISTAKE. PAEs are chosen for their technical expertise in restructuring mortgages. They very often have no knowledge of local partners and local players and no skills at management, tenant relations and coordination with local public officials. In Ohio where we have had experience with 7 PAEs over the last three years, it is clear that coordination has become our primary focus. We do not mind the responsibility, in fact, WE BELIEVE THAT OTAGS SHOULD BE GIVEN BOTH THE AUTHORITY AND THE COMPENSATION TO DO LOCAL COORDINATION OF THE M2M PROCESS AMONG STAKEHOLDERS, TENANTS AND LOCAL HUD OFFICES.

There needs to be coordination at another level. MAHRA set the parameters for contract renewal and addressed the mortgage restructuring opportunity for over-market properties, but subsequently, Congress and HUD have adopted a series of new programs to facilitate Mark UP to Market, Preservation transfers and other similar programs. Last Spring HUD attempted to codify these non-MAHRA incentives into a new 300+ page guidance on contract renewal. This was an important step...but the implementation of these many alternatives is still too fragmented. Owners, advocates, PAEs and local HUD officials are fuzzy on the variety of options that are available. A comprehensive view of all the renewal and preservation option should set the stage for a unified process of getting contracts renewed. COHHIO recommends the unification of all contact renewal and preservation programs under the oversight of one office in HUD.

One argument for the preservation of OMHAR as an entity is the need to preserve the staff expertise that OMHAR has accumulated. COHHIO is skeptical of this argument

because it dismisses some of the expertise that already resides in the HUD field offices, and because it slides over the fact that much of OMHAR's "expertise" comes from consultants. The role of consultants was made necessary because of the sunset provisions of the original MAHRA legislation. It would have been infeasible for a temporary office to hire permanent staff. On the other hand the extensive reliance on consultants has not addressed the more fundamental issue of staff expertise with HUD as a whole. It is a larger question that should be resolved independent of decisions about the future role of OMHAR.

In closing, COHHIO thanks the National Alliance of HUD Tenants and Victor Lambert of OMHAR for their diligent efforts in keeping a channel of communication open between tenants and stakeholders and the Office of Multi-family Housing Assistance in Restructuring.

Sincerely,

Bill Faith

Bill Faith
Executive Director

Louisiana Housing Finance Agency

M. J. "MIKE" FOSTER, JR.
GOVERNOR

V. JEAN BUTLER
PRESIDENT

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June 14, 2001

The Honorable Jack Reed
United States Senator
320 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reed:

As President of the Louisiana Housing Finance Agency (the "Agency"), I am writing to share with you the positive experience of the Agency in working with the Office of Multifamily Housing Assistance Restructuring (OMHAR) as a public Participating Administrative Entity (PAE) under the Mark-to-Market Program. To date the Agency has restructured 9 assets containing over 870 units throughout the State of Louisiana, thereby achieving the goals of OMHAR and the Agency of preserving safe, decent and affordable housing.

The Agency's initial performance as PAE in coordination with Foley & Judell, L.L.P., its PAE Partner, mandated a number of adjustments to meet the standards expected by OMHAR. OMHAR staff has been extraordinarily helpful in guiding the Agency's Mark-to-Market team through the steps required to restructure assets successfully. The Agency looks forward to maintaining throughout the term of the Mark-to-Market Program the productive relationship it has with OMHAR.

For any new initiative involving new systems and procedures there will be bumps in the road. The Agency is well familiar with the difficulty of developing new program initiatives which are certainly not perfect when first introduced and remain imperfect even after practical experience dictates adjustments must be made both to systems and procedures.

While there have been a number of adjustments in the Mark-to-Market Program since the Agency was first designated a public PAE, such adjustments, particularly the Owner incentives and (a)(7) refinancing approvals by OMHAR of non HUD-held loans, have been for the better. The Agency recommends additional adjustments to facilitate the restructuring process, including permitting OMHAR to approve 223(f) and 221(d)(4) loans as well as (a)(7) loans for HUD-held mortgages. Whether this authority is delegated to OMHAR or not does not undermine the very positive approach which OMHAR has had in partnering with the Agency.

The independence of OMHAR has proven to be effective from the Agency's point of view in coordinating the Mark-to-Market Program. The team approach of the Agency with OMHAR has proven to be highly productive. It would be particularly distressing to the Agency to have to undergo another learning curve if the authority for administering the program were to be transferred from OMHAR.

Sincerely,

Helena Cunningham

Helena Cunningham, President of LHFA

INTERSTATE REALTY MANAGEMENT CO.

VIA Federal Express; (202) 224-4642

June 15, 2001

The Honorable Senator Jack Reed
320 Hart Center Office Building
Washington, DC 20510

RE: Office of Multifamily Housing Assistance Restructuring (OMHAR)
Hearing Scheduled June 19, 2001

Dear Senator Reed:

I represent about 40 owner entities that are subject to MAHRA. These owners face the expiration of their Section 8 Housing Assistance Payment (HAP) contracts. MAHRA established that we must reduce the cost of HAP to comparable market rent levels while preserving affordable housing as a national resource. MAHRA charged OMHAR with the responsibility for administering this daunting task.

To date we have cooperated with OMHAR and have successfully concluded eight (8) Mark-to-Market transactions. There are 2 additional transactions where the terms have been approved and closing is at hand. These transactions have been complicated by a host of circumstances including Participating Administrative Entity (PAE) failure and reassignment and unique transaction situations that have not been encountered before. I am pleased to report the two pending deals are expected to close within the timelines established by MAHRA. Perhaps as important to note is that only one property has been lost to affordable housing.

Earlier this year we entered into a Memorandum of Understanding (MOU) with OMHAR for the collective and advance Mark-to-Market processing of our remaining properties. Under the MOU there are now 21 separate properties in process with a single PAE. There are 21 more that will enter the program in July and September. We are substantially heartened by the promise of predictable handling per the MOU. Early indications are that the timeline will be abbreviated by more than half.

Accordingly, we urge your support of the continuation of OMHAR.

Respectfully,

INTERSTATE REALTY MANAGEMENT

Robert E. Sampson

Robert E. Sampson, Jr., CPM
Vice President – Government Affairs

Cc: Michael Levitt
E. James Henderson

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Daniel L. Greenberg
President and Attorney-in-Chief

Civil Division
Helaine M. Barnett
Attorney-in-Charge

Bronx Neighborhood Office
Marshall Green
Attorney-in-Charge

18 June 2001

The Honorable Jack Reed
Chairman, Subcommittee on Housing and Transportation
Senate Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Legal Aid Society is an Outreach and Training Assistance Grantee and National Alliance of HUD Tenants affiliate. I write this letter in support of the extension of the Office of Multifamily Housing Assistance Restructuring (OMHAR) and its implementation of mortgage restructuring under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

Congress can maintain efficiency by extending OMHAR's function as a separate office reporting directly to the Secretary. After an initial growth period, OMHAR is now functioning smoothly and generating steady results. To change such a fundamental dynamic of MAHRA at this time would cause administrative confusion, personnel upheavals and mandate radical restructuring of the program which would be unnecessary, unwise and costly.

It must be stated that we favor the rebuilding of HUD's Office of Multifamily Housing and are generally opposed to the devolution of HUD functions to the states and to deregulation and voucherization of HUD housing stock . Accordingly, we are generally opposed to contracting out HUD functions such as contract renewal decisions for Section 8 , a process strikingly similar to the delegation of Mark-to Market decisions made to the PAE's.

We recommend that Congress define the minimum governmental function of the Mark-to Market program -- preparation and approval of the final MRRAS Plan and review of public and tenant comments throughout the process -- and relegate them to OMHAR.

MAHRA provides a valuable opportunity for tenant participation which fosters tenant empowerment. It is imperative that we maintain resident influence in the restructuring process. NAHT offers several recommendations to further improve tenant participation in the Mark-to - Market process:

a) Improve access to information;
b) Extend the $10 million set-aside for technical assistance funding;
c) Extend time for review of the MRRAS Plan;
d) Require written responses to tenant comments; and
e) Extend notification and meeting requirements in specific circumstances.

OMHAR has worked to preserve affordable housing despite the reluctance of owners to voluntarily participate in the Mark-to-Market program during a booming real estate market. We must continue as partners to ensure the preservation of affordable housing. In that vein, enhancing OMHAR's restructuring toolbox is crucial. A valuable tool would be a capital grant source to help potential nonprofit purchasers assemble the resources to purchase and preserve buildings undergoing the Mark-to-Market process. Therefore, we support the Preservation Matching Grant Bill to provide a capital grant source to promote non-profit transfers and preservation of Mark -to-Market buildings

In addition to capital grants and providing funding to maintain owner participation in the Section 8 program, we support a regulatory framework limiting owners ability to opt-out, pre-pay and obtain windfall profits through high market rents at the expense of residents and the nation's investment in affordable housing.

In conclusion, we support the extension of the Mark-to-Market restructuring authority and join the emerging consensus that the authority to restructure mortgages to save costs as outlined in MAHRA should be extended indefinitely.

Very truly yours,

Susan H. Chase
Project Attorney
Outreach and Training Assistance Grant

RHODE ISLAND HOUSING
AND MORTGAGE FINANCE CORPORATION

RICHARD H. GODFREY, JR.
Executive Director

June 18, 2001

The Honorable Jack Reed
United States Senate
320 Hart SOB
Washington, DC 20510

Dear Senator Reed:

As you listen to testimony from the Department of Housing and Urban Development regarding the Office of Multi-family Housing Assistance Restructuring, I hope that you will keep in mind our unsatisfactory experience with OMHAR in Rhode Island.

We were excited by the opportunities presented when OMHAR was created. First and foremost, there was the real possibility that we could preserve and restore HUD's Section 8 housing portfolio that is desperately needed by seniors and families in Rhode Island. It also provided Rhode Island Housing, which was already involved in providing 40,000 affordable homes and apartments in Rhode Island, a substantive role in the preservation process. We were excited about helping to bring HUD's portfolio up to our standard of quality while assuring its long-term affordability.

Unfortunately, OMHAR was never as committed to either the partnership or the preservation of housing as we were. Rhode Island Housing did everything required by OMHAR in a responsible and professional manner. OMHAR, however, continually changed its rules and procedures and appeared more interested in avoiding mistakes than in preserving affordable housing. They treated us like we were amateurs in cahoots with developers, instead of independent housing professionals.

From the initial contract negotiations to the final letter notifying us that it would not renew our contract, OMHAR regarded us with distrust and disdain. Therefore, the effort was doomed to fail. The consequence to Congress was little benefit from a substantial investment of time and money. The consequence for Rhode Island is the loss of critically needed affordable housing.

Given our experience and the experience of many PAEs, I urge you to transfer responsibility for Section 8 restructuring to HUD's Office of Housing and to direct HUD to devolve decision-making under Mark-to-Market to qualified local and state public agencies.

Very Truly Yours,

Richard H. Godfrey, Jr.
Executive Director

Property Resources Corporation
A Member of the PRC Group

David Gartenlaub
Executive Vice President

June 15, 2001

The Honorable Senator Jack Reed
320 Hart Senate Office Building
Washington, DC 20510
(202) 224-4642

Dear Senator Reed:

I am writing to voice my support for the Mark to Market program and hope the important work OMHAR is doing continues, as it plays a vital role in saving subsidized housing.

The financial feasibility of the nations housing stock will be adversely affected if the current legislated restructuring tools, such as debt restructuring, are not continued. OMHAR has worked well with the PAE's and financial institutions to restructure debt in a fashion, which if not continued, would have a devastating impact on the nations subsidized housing.

The program has gained momentum in the past six months and any changes now would adversely affect this progress. It is better for there to be a separate designated office whose sole focus is the Mark to Market program rather than it would be to integrate it back into Housing. If it were back in Housing, it would become one of several priorities for the HUD staff to deal with.

Mark to Market is a complex program and any changes in responsibility for administering the program will cause delays while new staff is trained and brought up to speed.

I hope you and your colleagues take this into consideration when discussing this matter. Subsidized housing is an important component in our society and I fear it might be irrevocably damaged if not handled properly.

Very truly yours,

David Gartenlaub

First Housing

June 15, 2001

The Honorable Senator Jack Reed
United States Senate
2nd & C Streets, NE
320 Hart Senate Office Building
Washington, DC 20510

via: FEDEX

Dear Senator Reed:

This is in reference to the upcoming committee hearings to consider the re-authorization of the Mark to Market program. Based on First Housing's experience, I recommend that the program be re-authorized. This corporation has been under contract with OMHAR since July of 1999. To date, we have completed work on 117 projects, involving 9,346 units. Of these projects, 74 were full restructures and 43 were "lites." The estimated annual savings to the federal government is $8,100,796.

With regard to the organizational structure, I would suggest that it remain as it is now. I believe that it is important to the Section 8 community, the contractors and the investors that there be continuity in policies, staffing and decision making. The staff expertise, which has been developed over the past couple of years, is important to the success of the program. To start anew or shift the program responsibility to other HUD staff who are already at capacity would set the program back at a time when production is accelerating.

If you need additional information, please advise.

Sincerely,

Clifford B. Hardy, CMB
President

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June 14, 2001

The Honorable Senator Jack Reed
320 Hart Senate Office Building
Washington, DC 20510;

Dear Senator Reed:

The Human Resource Development Council (HRDC) and the for-profit owner of a 50 unit subsidized housing project, the Sherwood Inn Apartments in Livingston MT, recently participated in the HUD-OMHAR Mark to Market Restructuring process. The HRDC is a nonprofit Community Action Agency and we will be purchasing the Sherwood Inn Apartments within 24 months of the restructuring.

The HRDC is not new to the preservation of affordable housing through finance restructuring process. The HRDC purchased a project through the 1998 Demonstration Program and another through mark up to market. Therefore, having several types of experiences with HUD's preservation processes, the HRDC submits the following testimony to be included in the Senate Banking Sub-committee review and recommendations in regards to OMHAR.

1. OMHAR is a great improvement over the 1998 Demonstration Program.
2. OMHAR appears to have the systems and contractors in place to fulfill the vital role of preserving our country's affordable housing.
3. OMHAR needs to be fine tuned but that will come through further experience.
4. Allowing OMHAR to continue their invaluable preservation work and perfect their program will be immeasurably more cost effective than allowing OMHAR to sunset and designing another program.
5. A commitment needs to be made to affordable housing preservation and to continue OMHAR so that entities are not hesitant to participate in restructuring.
6. OMHAR needs greater flexibility in the restructuring process so that more projects and owners will participate.
7. Finally, the HRDC requests that the statutes that govern OMHAR's restructuring processes be extended to the 1998 Demonstration Program to ensure that projects preserved during those early days can take advantage of the positive changes OMHAR has instituted.

Thank you for this opportunity to provide testimony on our experiences with OMHAR and please contact me if you should have questions.

Sincerely,

Jeffrey K. Rupp
CEO/President

Wingate Management Company, Inc.

June 14, 2001

Senator Jack Reed
320 Hart Senate Office Building
Washington, DC 20510

via Fax and Overnight Mail

Dear Senator Reed:

I am addressing this letter to your attention in order to express our support for the Mark-to-Market Program as it is currently being administered by OMHAR. Over the past several years our company has actively participated in HUD's Mark-to-Market Program (originally the Demo Program). In fact, in the last ninety days, we have successfully closed three Mark-to-Market restructuring transactions. Each of these transactions were essential to assure the long-term affordability and viability for properties with expiring Section-8 Contracts.

It is clear to our company and its affiliates that there has been considerable progress in the administration and oversight of the restructuring process under OMHAR's direction. These recent transactions were highly technical and we faced many obstacles along the way. Due to OMHAR's efforts to work closely with the PAE's, and their ability to overcome many unique obstacles, we were able to achieve results which we believe are beneficial to our residents, the Department of HUD, and our company.

I would like to point out, that where we have been able to partner with private PAE's, such as ONTRA and NW Financial, we have generally achieved the highest level of responsiveness, professionalism, and technical expertise. The recent closings of two complicated transactions in Detroit were truly a tribute to the hard work of ONTRA, the support from OMHAR, and the involvement of the local HUD office.

The Mark-to-Market Program, administered by OMHAR in its current format, provides the incentives and the teamwork which we believe will entice ourselves and others within the industry to continue to look to the Mark-to-Market Program as the vehicle to continue long-term affordable housing.

Sincerely,

Dean Siflinger
Senior Vice President

cc: Cathy Vann, ONTRA
Evelyn Wolff, NW Financial

KITSAP COUNTY CONSOLIDATED HOUSING AUTHORITY

The Honorable Jack Reed
United States Senate
320 Hart Senate Office Building
Washington, DC 20510

June 12, 2001

Dear Senator Reed:

Kitsap County Consolidated Housing Authority is a Participating Administrative Entity contracted by OMHAR to evaluate Section 8 housing in Washington State, Oregon, Idaho and California.

As you know, the project-based Section 8 program was created in 1968 to encourage private development of safe, livable and affordable housing for low-income elderly and disabled people, as well as for low-income families. Under the program, income-qualified people pay no more than 30% of their income for rent. HUD pays the apartment owner a subsidy -- the difference between what the renter can pay and what the unit could be rented for on the open market -- so the owner doesn't lose by providing needed affordable housing.

Based on our experience, we have found that the Mark to Market program is very effective at meeting its goals, which are:

- Saving federal taxpayer dollars by adjusting subsidies to realistic levels and by preserving less expensive existing affordable living units.
- Ensuring that these living units are safe and livable.
- Providing an independent, unbiased evaluation of Section 8 properties.

The reason we believe this program has been so successful within such a short time frame is that:

- OMHAR's independence has allowed and encouraged faster decision making, and;
- OMHAR has pulled together a small nucleus of professional, well-trained staff, which has provided PAEs like ourselves with the kind of excellent support and guidance we need to complete our mission.

We urge your support for maintaining this program with the same degree of independence that has made it a success to date. If you have any questions, please call me at (360) 535-6135.

Sincerely,

Donald E. Chase
Housing Preservation Director

CreditVest, Inc.

Two Gateway Center • 16th Floor • Pittsburgh, PA 15222
(412) 263-5666 • Fax (412) 263-5699

June 13, 2001

Senator Jack Reed
320 Hart Senate Office Building
Washington, DC 20510

Re: Office of Multifamily Assistance Restructuring (OMHAR)
Mark to Market Program (M2M)

Dear Senator Reed:

This letter offers my endorsement for the fine work completed by OMHAR in their effort to preserve affordable housing. Given the complexity of developing and implementing a program, which must consider all the interested parties, they have done an admirable job. Due to much effort by many dedicated individuals, a comprehensive program now exists to efficiently process expiring HAP Contracts. With the first series of transaction closings completed and many more in the pipeline, the M2M Program benefits are becoming evident. Affordable housing is being preserved for those in need at a cost saving to the taxpayers. Many more HAP Contracts will be expiring within the next several years and OMHAR provides the most cost-effective manner to evaluate and resolve these Contracts. For the benefit of the tenants, taxpayers, property owners and local communities, I would urge you to appropriate sufficient funds to allow them to complete their work.

Sincerely,

Alan C. Patterson

Alan C. Patterson
President

ESSEX PLAZA MANAGEMENT ASSOCIATES

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NEWARK, NEW JERSEY 07102-2321

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June 15, 2001

The Honorable Senator Jack Reed
320 Hart Senate Office Building
Washington, DC 20510

Re: Letter of Support

Dear Senator Jack Reed,

The financial feasibility of these properties will be adversely impacted if mark to market is not continued and rents are thereby reduced without the currently legislated restructuring tool, i.e., debt restructuring, partial payment of claims, HUD take back of 2nd and 3rd mortgages, etc.

The program gained a great deal of momentum in the past six months and any changes now would adversely impact this progress. It would be better if a separately designated office, whose sole responsibility would be the mark to market program, would be assigned rather than integrating it back into Housing where it would become one of several priorities for the HUD staff to deal with in addition to their current responsibilities.

M2M is a complex program and any changes in responsibility to administer the program will cause delays while a new staff is trained and brought up to speed.

Sincerely,

J. Kenneth Pagano, President & CEO

EQUAL HOUSING OPPORTUNITIES

COMMISSIONERS:

DR. CHARLES H. ANDREWS
MR. E. EARL BENSON
MS. JOANN T. FOWLER
DR. JOYCE R. SCHAFER
MR. CARTER M. STOUT
MRS. PEARLIE M. TOLIVER

MACON HOUSING AUTHORITY

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June 13, 2001

Senator Jack Reed
320 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senator Reed:

Re: OMHAR and the Mark-to-Market Program.

Macon Housing Authority, in Macon Georgia, has been a PAE in the Mark-to-Market Program since signing the original PRA in July 1999. Our first assignments were made October 1, 1999, at which time we were still in the process of securing third-party contractors for preparing our Appraisals and Physical Condition Assessments.

We received nine (9) assets for M2M processing in the initial assignment. As did many PAEs, we had difficulty managing this many assignments at one time in a new program with so many unanswered questions. Some of the difficulty encountered was a result of our doing more than was necessary, particularly on the OMHAR Lites (Reduction of Section 8 Rents to Comparable Market Rents without Restructuring). This was due to the OPG not being specific as to requirements for processing, or more importantly, not being specific as to what was not required in processing these cases, as opposed to requirements of Full Restructures. The learning curve for all, PAEs and OMHAR personnel alike, has been steep, but lessons and processes have been learned.

There were many well documented delays in the infancy of the Mark-to-Market program on the part of OMHAR, and in the first year after assets were assigned, there were many justified complaints leveled against OMHAR. The organization has turned the corner, listened to the people in the field and made many positive changes within the legislative structure of the program. The Revised OPG of January 2001, the change from a "process-driven program" and the experience that personnel gained in the first full year of operation has turned the Mark-to-Market Program into what Congress envisioned. The owner initiatives implemented in the fall of 2000 has greatly improved owner cooperation. OMHAR is now working and communicating efficiently with PAEs and both have come to understand what is expected of themselves and the other. In the last six months, the program has come into its own and is now reaping the benefits of the long and arduous start-up period.

There remains a large number of assets in the OMHAR pipeline, many of which will not be closed before September 30, 2001. There is also a large number of Section 8 properties having contract expiration dates after September 30, 2001 that should go into the Mark-to-Market Program. Having seen the physical and financial condition of a number of Section 8 properties, it is obvious that this program is needed for the very reasons the legislation was originally enacted. It would be a travesty for the program to not continue. OMHAR has learned lessons, adapted the program and built working relationships with PAEs that will allow them to successfully accomplish the goals of MAHRA.

Sincerely,

Bob Morgan

Bob Morgan
M2M Process Manager
Macon Housing Authority

HESKIN / SIGNET

P A R T N E R S

AN ASSET MANAGEMENT JOINT VENTURE

June 13, 2001

The Honorable Jack Reed
United States Senate
320 Hart Senate Office Building
Washington, DC 20510

RE: Office of Multifamily Housing Assistance Restructuring Mark-To-Market Program

Dear Senator Reed:

Heskin/Signet Partners is a Participating Administrative Entity (PAE) for the Office of Multifamily Housing Assistance Restructuring (OMHAR) as well as a Teaming Partner for several Public PAEs. We have been involved with the Mark-To-Market program since its inception and have been instrumental in the resolution of over 150 projects. Due to our tenure, we have been through the evolution of the program and have seen the development of what we consider to be an excellent program. It preserves affordable housing, saves taxpayers money, insures that the properties are sound both financially and physically, and have the incentives for the owners to continue with the program. As you can see, this program is unique in that it is a "win-win" for all parties.

OMHAR has worked diligently to insure the integrity and success of the Mark-To-Market program. We feel the OMHAR staff maintains an objective perspective in its administration of the program and acts as an independent non-biased entity in its determination of acceptable resolutions to projects.

As a PAE, we feel very strongly that the Mark-To-Market program should continue due to it being successful in its mission. We also have an appreciation for the effort and time that has been devoted to develop the program and training. We feel that trying to convert this program to any other entity within HUD would cause the program to lose valuable time, due to the intense and complex learning curve, as well as the objective perspective OMHAR brings to the program. Heskin/Signet Partners, as part of the Mark-To-Market program, works with many of the HUD Hubs throughout the country and the personnel within the HUD Hubs have been extremely helpful and a great resource. They have many duties and responsibilities that they must accomplish on a daily basis and to add a program as complex and sophisticated as the Mark-To-Market to their duties would be disastrous.

We know there are many more properties that are eligible for the Mark-To-Market program and we feel we have developed the momentum to resolve these projects in a timely manner. However, for its continued success, the program should move forward with little or no modifications to existing procedures and staff.

Heskin/Signet Partners would recommend leaving the program with the current entity OMHAR or an entity that would maintain the current OMHAR staff in order to maintain program continuity, integrity and success.

If you have questions or concerns, please feel free to contact us at (303) 773-3330. Thank you for your time and consideration.

Sincerely,

Jerry R. Anderson
Executive Vice President

JEFFERSON COUNTY ASSISTED HOUSING CORPORATION

3700 INDUSTRIAL PARKWAY
BIRMINGHAM, ALABAMA 35217-5316
205/849-0123
FAX: 205/849-0137
FAX: 205/841-0676

June 13, 2001

The Honorable Jack Reed
United State Senator
320 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reed:

I am writing this letter in support of the Office of Multi-Family Housing Restructuring and their mission of restructuring HUD insured mortgages. As the first public Participating Administrative Entity in the nation to sign a Project Restructuring Agreement with OMHAR, I believe I have a unique perspective on the agency and the entire mortgage restructuring process.

Any discussion of the agency and the restructuring process needs to begin with an examination of the goals set forth by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). Those are as follows:

1. Social – Preserving the affordable housing stock by maintaining the long-term physical and financial integrity of privately-owned, HUD-subsidized rental housing insured by FHA.
2. Economic – Reduce the long-term project-based Section 8 rental assistance costs and

reduce the costs of insurance claims paid by FHA.

3. Administrative – Address problem properties by terminating relationships with owners who violate agreements and program requirements; promote greater operating and cost efficiencies; and establish a nationwide network of locally based Participating Administrative Entities (PAEs) to administer the restructuring program.

While these are all admirable goals, they continuously compete with one another and speak volumes about the complexity of the mortgage restructuring process. Preserving affordable housing may have to come at the expense of maintaining Section 8 project-based rental assistance costs or, as has been the case in Alabama, reducing those costs minimally. Terminating a relationship with an owner who violates agreements and program requirements may come at a cost to the FHA insurance fund. In short, I believe Congress and HUD grossly underestimated the complexity of the mortgage restructuring process and therefore, the time and resources that would be required to complete it.

Having the perspective of being involved with the process from "day one", I can say there has been a tremendous learning curve for OMHAR, other HUD offices, the PAEs, and local owners ana managers. The challenges presented by the process at times seemed insurmountable. However, the investment in the development of the restructuring process and training seems to be coming to fruition. I know from our own experience that the time it takes to complete a full mortgage restructuring has

decreased from 300 plus days early in the program to less than 100 days currently.

Discussions regarding OMHAR and the mortgage restructuring process frequently forget the manner in which it impacts the resident. Either through the funding of physical and management improvements to the property or the termination of a Section 8 Project-Based Assistance Contract and the provision of vouchers to those residents, the quality of housing provided to residents has improved dramatically.

OMHAR's approach to use locally qualified contractors to complete the restructuring also merits discussion. For years, HUD and its various programs have suffered under what I call "the Washington syndrome". Staff in headquarters, who frequently have never worked in the field, much less Alabama, were charged with the task of developing and implementing programs across the nation with little sensitivity to local requirements and peculiarities. Local contractors have the best knowledge of the rental market, construction costs and the availability of affordable housing. Local contractors have also been able to build working relationships with owners and managers that have led to the successful conclusion of many restructurings. While OMHAR has faced much criticism regarding its "productivity", shudder to think how those numbers would look if the program had been operated out of HUD headquarters without local contractors.

In closing, I would suggest that OMHAR's performance be reviewed in light of the complexity of the tasks at hand and not just in terms of production numbers. The process has improved dramatically and it would serve no good purpose to

completely dismantle it. If you have any questions or require any additional information, please do not hesitate to give me a call.

Sincerely yours,

Eric Q. Strong,
Chief Executive Officer

AIMCO

Apartment Investment and Management Company

June 14, 2001

By Facsimile: 202 224-4680

Honorable Senator Jack Reed
320 Hart Senate Office Building
Washington DC 20510

RE: Office of Multifamily Housing Assistance Restructuring

Dear Senator Reed:

Apartment Investment and Management Company (" AIMCO") is a real estate investment trust, with headquarters in Denver, Colorado and 25 regional operating centers, which holds a geographically diversified portfolio of apartment communities. AIMCO, through its subsidiaries, operates approximately 1,640 properties, including approximately 313,000 apartment units and serves approximately one million residents. Aimco's properties are located in 47 states, the District of Columbia and Puerto Rico. Included in the AIMCO portfolio are approximately 450 affordable housing properties containing just under 50,000 units.

The mark–to-market program (the "Program") is an important program to AIMCO and the residents in the AIMCO affordable housing portfolio. AIMCO is currently processing approximately 110 properties through the Program for restructuring. The Program will enable AIMCO to continue to provide safe and decent affordable housing to qualifying tenants for many years to come while protecting HUD from claims under its mortgage insurance programs. The Program is an important element in addressing the affordable housing requirements in the country.

AIMCO supports the mark-to-market program and the administration of the Program by the Office of Multifamily Housing Assistance Restructuring.

Sincerely,

Lance Graber

Lance Graber
Executive Vice President

City of Chicago
Richard M. Daley, Mayor

Department of Housing
John G. Markowski
Commissioner

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June 14, 2001

The Honorable Jack Reed
Chairman
Subcommittee on Housing and Transportation
Senate Banking, Housing and Urban Affairs
320 Hart Senate Office Building
Washington D.C. 20510

Dear Chairman Reed:

I am writing in support of the Mark-to-Market (M2M) program. As you begin to discuss the future of this challenging and important program, I want to share with you some of the observations that we at the Department of Housing have made through our work as PAE for the City of Chicago. We have participated in both the current M2M program as well as the demonstration program that preceded it. While there is much we would like to say about M2M both in regard to the legislation that authorized it and the regulations and procedures that governed its implementation, for the sake of brevity I would like to confine my remarks to what will certainly be one of the central issues of your deliberations: the role of the Office of Multifamily Housing Assistance and Restructuring (OMHAR).

We believe that OMHAR is doing an admirable job in its implementation of the program. In our experience, all levels of staff and management have been focused, responsive, and flexible. It should be stressed that M2M went through an extremely difficult and protracted start up period which undoubtedly formed the basis of a lot of negative feelings toward the program that some people continue to harbor today. It should also be emphasized that restructure transactions are extremely complex and drawn-out and further burdened by the reluctance of many owners to participate in this program. In our view, however, most facets of the program have consistently improved over time. The program is meeting its main objectives of assuring that the immediate and long term capital needs of properties are met; that the properties are put on a positive trajectory for long-term financial stability and sustainability; that tenant concerns are fully documented and incorporated into the restructure plan; and that the cost of the Section 8 program is reduced.

Certainly, there are many ways to improve the program; to make it more efficient and responsive to ownership and tenants a like. But we think the most direct path towards these improvements lies with the current staff and management team. It would be extremely disruptive to dismantle OMHAR and transfer responsibility over to HUD to be handled by an existing staff that would have to be trained to run the program. Mark-to-Market benefits enormously from the fact that the OMHAR team is highly focused, and incorporating the program into HUD would inevitably mean the loss of the important advantages we have gained by having this focus. We also believe that the staff and leadership at OMHAR are responsive, flexible, and dedicated to making ongoing improvements to the implementation of M2M.

Sincerely,

David Saltzman
Deputy Commissioner

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OF COUNSEL

OUR FILE NO.

June 14, 2001

VIA EXPRESS DELIVERY
The Honorable Jack Reed
United States Senator
320 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reed:

Foley & Judell, L.L.P. is writing to express support of the Office of Multifamily Housing Assistance Restructuring ("OMHAR") in its efforts to coordinate and improve the administration of the Mark-to-Market Program. As a Teaming Partner with the Louisiana Housing Finance Agency (the "Agency") in the State of Louisiana, and as a private Participating Administrative Entity ("PAE") in ten other states, Foley Judell has successfully restructured over ten (10) assets within the State of Louisiana in partnership with the Agency and has restructured or closed over eleven (11) assets outside of Louisiana, preserving over nineteen hundred thirty six (1936) units of affordable housing.

As a private PAE working in partnership with a public PAE, we understand the challenges of integrating the discreet activities of separate entities functioning in different capacities to achieve the same objective. We also fully appreciate the challenge of making sure that all stakeholders in preserving decent, safe and affordable housing are provided the opportunity to share interests, experience and/or insights with respect to restructuring a single asset. In every state, the firm develops relationships with the local HUD Offices, the State housing finance agency (State HFAs"), the local public housing authorities, local governments and local financial institutions that provide such entities opportunities to help restructure each affordable housing asset assigned to the firm. Third party reports and preliminary draft restructuring plans are routinely provided to local HUD offices and State HFAs' for review and comment. We firmly believe that the Mark-to-Market initiative routinely creates win/win opportunities for all stakeholders, especially owners and residents of the affordable housing assets.

Throughout our tenure as a teaming partner with the Agency and our services as a private PAE, we have always found the staff and other professionals with OMHAR extraordinarily knowledgeable and helpful in translating the complex issues associated with preserving affordable housing assets under the Mark-to-Market initiative. More importantly, the successful teams and

teamwork which have been promoted and developed by OMHAR will be at risk if Congress fails to permit OMHAR an opportunity to complete the job for which it was created.

Foley & Judell commends OMHAR for developing the owner incentives, streamlined refinancing commitments and closing designs to permit all PAEs to serve as productive partners in preserving affordable housing assets. The firm looks forward to continuing its partnership with OMHAR as PAE until all qualified affordable housing assets are preserved.

Sincerely,

Wayne J Neveu

Wayne J. Neveu, Partner
Foley & Judell, L.L.P.
PAE

WJN/

THE SIEGEL GROUP

June 14, 2001

The Honorable Jack Reed, United States Senator
320 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reed:

Our company operates in the affordable housing sector, as a reral estate developer and as a provider of development consulting services to residential real estate-oriented non-profit and for-profit organizations, financial institutions, investment banking firms, and various governmental entities nationwide. The undersigned is the former Chief Credit Officer of the State of Texas. We are also a Participating Administrative Entity for the Office of Multifamily Housing Assistance Restructuring (OMHAR), one of the subjects in your upcoming hearing of June 19, 2001 and the subject of this letter.

Recognizing the enormous undertaking represented by the Multifamily Assisted Housing Reform and Affordability Act of 1997 from the point of view of a participant, we wish to express the following to you and your committee members as your consider the fate of OMHAR:

1. Notwithstanding opinions to the contrary from detractors of OMHAR, we sincerely believe that they have done a credible job since the inception of this extremely difficult and virtually unprecedented task;
2. Starting with virtually nothing, they have invested significant time and effort in creating the systems, procedures, incentives and technology necessary to deal with owners, tenants, lenders, professional consultants, the Department of Housing and Urban Development staff and a myriad of state housing finance agencies and other interested governmental, public and private entities;
3. OMHAR has achieved significant inertia in the process and is reaching the final dispositions of these deeply troubled properties on a regular and continually accelerating basis;
4. To interfere with OMHAR at the very time they and numerous Participating Administrative Entities throughout the country are "hitting their stride" and closing and preparing to close a significant number of these financial restructurings seems to us to be contrary to the whole purpose of the Multifamily Assisted Housing Reform and Affordability Act of 1997. There remains much work to be accomplished and the structure to be successful is fully operational;

5. The success of OMHAR to date has largely been achieved by their semi-independence, allowing an entity to focus solely on the restructuring process. We believe that it is in the best interests of the program and the hundreds of thousand of affected low income residents to keep the status quo and allow the process to be completed; and,

6. In our experience, on the "front lines" so to speak, this is not only a financial restructuring, it is a process of improving the lives and living conditions of thousands of Americans who in many cases have no alternative housing that is decent, safe and sound.

Yes, the program has had glitches and there have been bumps in the road, but we ask that you consider the shear mass of this problem, the potential impact on the lives of the basic housing needs of the most needy of our citizens and the effects of changing this program at the very time when it has developed a clear path to a successful completion of its goals.

Senator Reed, we strongly urge you to take the steps that are necessary to allow those of us for whom this process is a crusade to complete our duty and responsibility to all of the affected parties to this serious national problem.

Sincerely,

Howard A. Siegel
President

cc: The Honorable Phil Gramm, United States Senator from the State of Texas
The Honorable Lloyd Doggett, United States Representative from the 10th District of the State of Texas